A NONSUBSTANTIVE REVISION OF STATUTES RELATING TO THE LICENSURE OF INSURERS AND RELATED ENTITIES, LIFE INSURANCE, AND CERTAIN GROUP BENEFIT PROGRAMS FOR GOVERNMENTAL EMPLOYEES

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section prevails. (V.T.I.C. Art. 10.45 (part).)

Source Law

Art. 10.45. . . . [Any officer, agent or employ¿e of any fraternal benefit society organized under the laws of this State who neglects or refuses to comply with or who violates any provision of the laws of this State governing such societies,] shall where the penalty is not provided for in the preceding articles of this chapter, ...

CHAPTER 886. LOCAL MUTUAL AID ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

CHAPTER 886. LOCAL MUTUAL AID ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 886.001. DEFINITION. In this chapter, "local mutual aid association" means an entity, including a society or association of any sort, authorized under this chapter to engage in the business of insurance and pay benefits with money provided by assessments on the members as needed, including a burial association described by Section 888.001. (V.T.I.C. Art. 12.01 (part).)

Source Law

Art. 12.01. [This chapter and Chapter 14 of this code shall apply to and regulate the business of] local mutual aid associations, including those associations defined in Article 14.37 of Chapter 14 of this code operating for the purpose of providing benefit for members and death benefit for the beneficiaries of deceased members, and shall comprehend and include all societies and associations of any sort operating an insurance business and paying such benefits where funds are provided by assessments upon the members as needed . . . .

Revisor's Note

V.T.I.C. Article 12.01 refers to associations defined by V.T.I.C. Article 14.37 "operating for the purpose of providing benefit for members and death benefit for the beneficiaries of deceased members." The revised law omits the quoted phrase as unnecessary, as it describes the only type of entity described by Article 14.37, revised in this code as Section 888.201. Throughout this chapter, the revised law uses the phrase "burial association" because that is the phrase used to describe those entities in Chapter 888.

Revised Law

Sec. 886.002. APPLICABILITY OF CHAPTER; EXEMPTIONS. (a) Except as provided by Subsection (b), this chapter and Chapters 887 and 888 apply to local mutual aid associations.

(b) This chapter does not apply to the following entities unless the entity is a burial association described by Section 888.001:

(1) a labor union, domestic order, or association that does not provide a death benefit of more than $150;

(2) an association described by Section 885.004; or

(3) any society or association operating before March 21, 1929, statewide on an assessment basis under a charter

granted under another statute of this state. (V.T.I.C. Arts. 12.01 (part), 12.16.)

Source Law

Art. 12.01. This chapter and Chapter 14 of this code shall apply to and regulate the business of local mutual aid associations . . . except those exempt under this chapter and Chapter 14 aforesaid.

Art. 12.16. The provisions of this chapter shall not apply to labor unions, domestic orders or associations which do not provide a death benefit of more than One Hundred and Fifty ($150.00) Dollars, nor to the associations which are now described in Article 10.38 of this code, nor any society or association, if any, heretofore legally operating statewide on an assessment basis under any charter heretofore granted under any valid statute of this State; provided, nothing herein shall affect those associations defined in Article 14.37, Chapter 14 of this code, organized and operating under the provisions of this chapter.

Revisor's Note

(1) V.T.I.C. Article 12.16 refers to any society or association "heretofore" operating under certain laws. Article 12.16 is derived from, and is substantively identical to, Section 29, Chapter 274, Acts of the 41st Legislature, Regular Session, 1929. The revised law substitutes March 21, 1929, the date that Chapter 274 was approved, for "heretofore."

(2) V.T.I.C. Article 12.16 refers to a charter granted under any "valid" state statute. The revised law omits "valid" as unnecessary because the word does not add to the clear meaning of the law. For example, a charter may not be granted under a statute that was not valid.

Revised Law

Sec. 886.003. LIMITED EXEMPTION FROM INSURANCE LAWS. A local mutual aid association is subject only to this chapter and Chapters 887 and 888. Except as otherwise provided by this chapter, a local mutual aid association is exempt from all other insurance laws of this state, unless a local mutual aid association is expressly designated in the law. (V.T.I.C. Art. 12.12 (part).)

Source Law

Art. 12.12. . . . Except as herein provided, such association shall be governed by this chapter and Chapter 14 of this code and shall be exempted from all other provisions of the insurance laws of this State. No law hereafter enacted shall apply to them unless they be expressly designated therein.

Revisor's Note

V.T.I.C. Article 12.17 states that certain laws do not apply to a local mutual aid association. The revised law omits Article 12.17 as duplicative of V.T.I.C. Article 12.12, revised as this section. Article 12.12 specifically designates those laws that apply to an association. The omitted law reads:

Art. 12.17. The provisions of the Fraternal Society Law, which is Chapter 10 of this code, and Chapter 3 of this code shall not apply to associations coming within purview of this chapter.

Revised Law

Sec. 886.004. ORGANIZATION OF NEW ASSOCIATION PROHIBITED. A new local mutual aid association may not be organized under this chapter. (V.T.I.C. Art. 22.21.)

Source Law

Art. 22.21. From and after the effective date of this Act, no local mutual aid association or local mutual burial association may be organized under and pursuant to the provisions of Art. 12.05 of the Insurance Code of Texas. The provisions of this Art. 22.21 shall not, however, be applicable to: (1) any company or association which holds a temporary or other certificate of authority at the effective date of this Act; or (2) any company or association for which an application to the

Commissioner of Insurance or the State Board of Insurance for a temporary or other certificate of authority is pending at the effective date of this Act.

Revisor's Note

V.T.I.C. Article 22.21, which took effect on August 28, 1961, prohibits the formation of a local mutual aid association "[f]rom and after the effective date of this Act" and refers to associations that have applications pending or that hold temporary certificates of authority on that date. The revised law omits these provisions as executed.

Revisor's Note
(End of Subchapter)

(1) Provisions contained in V.T.I.C. Articles 12.02, 12.05, 12.06, 12.07, and 12.08 authorize and specify the procedures and requirements for incorporation as a local mutual aid association; however, under V.T.I.C. Article 22.21, revised in this chapter as Section 886.004, a local mutual aid association may not be organized from or after August 28, 1961. Consequently, the revised law omits the referenced provisions in Articles 12.02, 12.05, 12.06, 12.07, and 12.08 as executed. The omitted law reads:

Art. 12.02. Any person or persons desiring to organize a local mutual aid association to be operated upon the assessment as needed or similar plan or a burial company, association or society as defined in Article 14.37, Chapter 14 of this code, shall be permitted to do so upon the terms and conditions hereinafter set forth and by complying with the provisions of this chapter. . . .

Art. 12.05. Any number of persons not less than five, all of whom must be citizens of the United States and residents of the territory to be embraced within their field of operation may organize a local mutual aid association or an association as defined in Article 14.37 of Chapter 14 of this code in the following manner:

(1) They shall draw up articles of association which shall be executed in triplicate, acknowledged as required for instruments intended to be recorded, and [which shall state]:

. . .

(d) . . . the names of the persons who will, pending permanent organization, fill such offices.

(2) The said articles of association so executed shall be presented to the Board of Insurance Commissioners of the State of Texas, together with the application for a permit to solicit members, and together with the bond in a sum of Five Thousand ($5,000.00) Dollars, which said bond shall be payable to the Board of Insurance Commissioners, executed by the organizers as principals and one surety company, acceptable to the Board, as surety, conditioned that if the persons organizing the association shall fail to secure the requisite number of members or for any other reason shall not consummate the organization of the association within six (6) months from its date, then the advance membership dues and assessments shall be returned to the parties paying same.

(3) The constitution and by-laws under which the association will operate pending permanent organization, together with the certificate of membership which the association proposes to issue, shall be submitted to the Board for approval.

(4) The Board shall make an investigation of the individuals who shall make such application, and when the Board shall be satisfied that the organizers are responsible persons, and of the probability that territory to be served can support such association and that the articles of association, constitution, by-laws and certificates are in proper form and the bond shall have been approved, it shall issue a permit to the organizers authorizing them to solicit membership in the association and to collect the membership fee and one death

assessment.

(5) When such permit to solicit membership has been issued by the Commissioners, the organizers may solicit members, and when they shall have received not less than five hundred (500) bona fide applications for membership in the association in all classes and when they shall have collected from such members the membership fees and one advance assessment, they shall make a showing to the Board of Insurance Commissioners of Texas in such form as is required, setting forth the facts. Such membership should be completed within six (6) months from date of filing application. . . .

(6) [The Board shall then issue] . . . together with a certified copy of the charter.

Art. 12.06. Upon application for charter to do business in Texas the Board of Insurance Commissioners may determine whether the name of the association would be confusing and misleading to the public; if so, it may refuse the certificate or charter, and prohibit the doing of business under the name.

Art. 12.07. If the organizers shall not complete the membership within the time required, the money collected shall be returned and the temporary permit issued shall be revoked.

Art. 12.08. The constitution, by-laws and form of certificates of each association submitted to the Board and approved before writing of business is commenced, shall be effective until the first annual meeting of the association, at which time they must be confirmed by such meeting, with or without amendments as the association may decide.

. . .

(2) V.T.I.C. Article 12.05 states that the certificate of authority of a local mutual aid association expires on May 31 following issuance of the certificate. The revised law omits the reference to the expiration of a certificate of authority as

repealed. Under V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority of an insurer is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, repealed "[a]ll laws and parts of laws in conflict herewith . . . including . . . [Article] . . . 14.17 . . . to the extent that they require periodic renewal of certificates of authority." Article 14.17 is applicable to a local mutual aid association in accordance with V.T.I.C. Article 12.12, revised in pertinent part in this chapter as Section 886.003. The omitted law reads:

Art. 12.05. . . .

(6) [The Board shall then issue to such association a certificate of authority to do business in Texas,] which shall expire on May 31st following, [together with a certified copy of the charter.]

[Sections 886.005-886.050 reserved for expansion]

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 886.051. OPERATION UNDER CERTIFICATE OF AUTHORITY. A local mutual aid association engages in business under a certificate of authority issued by the department. (V.T.I.C. Art. 12.05 (part).)

Source Law

Art. 12.05. . . .

(6) The Board shall then issue to such association a certificate of authority to do business in Texas . . . .

Revisor's Note

V.T.I.C. Article 12.05 refers to "the Board [of Insurance Commissioners of the State of Texas]." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners have been changed appropriately.

Revised Law

Sec. 886.052. COMPLIANCE WITH LAW REQUIRED. An individual, firm, or corporation may not engage in business in this state as a local mutual aid society or association that pays a death benefit or other benefit and that pays benefits with money provided by assessments made as necessary unless the individual, firm, or corporation is acting in accordance with this chapter or another law of this state. (V.T.I.C. Art. 12.02 (part).)

Source Law

Art. 12.02. . . . No person, firm or corporation shall hereafter operate in this State any sort of a local mutual aid society or association paying a death benefit or other benefits and providing its funds by assessments as needed, except under the provisions hereof, or under other specific provisions of the laws of this State.

[Sections 886.053-886.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF ASSOCIATION

Revised Law

Sec. 886.101. GENERAL POWERS OF ASSOCIATION. A local mutual aid association is a body corporate that may sue and be sued in its own name and exercise the other powers and functions specifically granted in this chapter, but not otherwise. (V.T.I.C. Art. 12.12 (part).)

Source Law

Art. 12.12. Any association organized under the provisions hereof or which has accepted the provisions hereof shall for the purposes of operation be and become a body corporate with authority to sue and be sued in its own name and to exercise the other powers and functions specifically herein granted, but not otherwise. . . .

Revised Law

Sec. 886.102. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a local mutual aid association. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to local mutual aid associations.

(b) On advance approval of the commissioner, a local mutual aid association may pay dividends to its members. (V.A.C.S. Art. 1396-10.04, Sec. B (part).)

Source Law

Sec. B. In so far as the same are not inconsistent with or contrary to any applicable provision of the Insurance Code of Texas, or any amendment thereto, the provisions of this Act shall apply; to and govern . . . local mutual aid associations . . . provided however, (a) that any such mutual insurance associations or . . . may, upon advance approval of the Commissioner of Insurance, pay dividends to its members, and (b) that wherever in this Act some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the Secretary of State, such is to be vested in, required of, or performed by the Commissioner of Insurance in so far as such mutual . . . associations are concerned.

Revisor's Note

(1) Section B, V.A.C.S. Article 1396-10.04, states that the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) shall "apply to and govern" local mutual aid associations. The revised law omits the reference to "govern" because, in context, "govern" is included in the meaning of "apply to."

(2) Section B, V.A.C.S. Article 1396-10.04, refers to the Insurance Code "or any amendment thereto." The revised law omits the reference to "any amendment thereto" because under Section 311.027, Government

Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(3) Section B, V.A.C.S. Article 1396-10.04, refers to a "duty, responsibility, power, authority . . ." of the secretary of state and commissioner of insurance. The revised law substitutes "power and duty" for the quoted phrase because "responsibility" is included in the meaning of "duty" and "authority" is included in the meaning of "power."

(4) Section B, V.A.C.S. Article 1396-10.04, refers to an act "vested in, required of, or to be performed by" the secretary of state and commissioner of insurance. The revised law omits the references to "vested in" and "required of" because, in context, these phrases are included in the meaning of the phrase "to be performed by."

Revised Law

Sec. 886.103. ARTICLES OF ASSOCIATION, CONSTITUTION, AND BYLAWS. (a) The articles of association of a local mutual aid association must state:

(1) the name of the association, which must be distinctly different from other associations operating in the same area;

(2) the purpose for which the association is created, including the upper and lower age limits of individuals to whom benefit certificates may be issued;

(3) the location of the principal office of the association;

(4) the territory in which the association will engage in business;

(5) the titles of the officers of the association; and

(6) the number of directors of the association.

(b) The constitution and bylaws of the association may not violate, and must be in harmony with, this chapter. (V.T.I.C. Arts. 12.05 (part), 12.08 (part).)

Source Law

Art. 12.05. . . .

(1) [They shall draw up articles of association] . . . which shall state:

(a) The name of the association, which must be distinctly different from associations operating in the same radius.

(b) The location of the principal office and the territory to which its operation shall be confined.

(c) The object for which the association is created, including the upper and lower age limits of persons to whom benefit certificates may be issued.

(d) Titles of the officers of the association and the number of directors, and . . . .

Art. 12.08. . . . The constitution and by-laws of such association shall not violate any of the provisions of this law, but shall be in harmony herewith.

Revised Law

Sec. 886.104. BENEFITS AUTHORIZED. (a) Except as provided by Subsection (b), a local mutual aid association may provide only for the payment of death benefits. An association may not provide for old age benefits or benefits for accidental injury or sickness.

(b) A local mutual aid association organized before March 21, 1929, that provides for the payment of death, old age, and accident benefits may continue to provide those benefits.

(c) The policy issued by the association must clearly state the benefits provided.

(d) A local mutual aid association may not issue a policy providing for:

(1) a level premium;

(2) guaranteed benefits; or

(3) surrender of loan values. (V.T.I.C. Arts. 12.09, 12.10.)

Source Law

Art. 12.09. Any association hereafter organized under the provisions of this chapter shall provide for the payment of death benefits only and may not provide for old age benefits and benefits in case of accidental injuries or sickness. Any association heretofore organized prior to March 21, 1929, and paying death, old age and accident benefits may continue to pay same. Anyone or all of said benefits and the benefits to be provided shall be clearly set out in the policy issued by the association.

Art. 12.10. An association shall not issue certificates providing for a level premium or guaranteed benefits, nor for surrender of loan values.

Revisor's Note

V.T.I.C. Article 12.10 refers to "certificates" providing for a level premium or guaranteed benefits. The revised law substitutes "policy" for "certificate" because the terms are synonymous in context and "policy" is the term more frequently used in this chapter.

Revised Law

Sec. 886.105. TERRITORIAL LIMITATIONS. (a) A local mutual aid association may conduct business in any county in this state.

(b) If the articles of association of an association provide that the association engages in business only in a limited territory, the association may amend the articles to permit statewide business. After the amendment, the association is entitled to receive a certificate of authority permitting statewide business. (V.T.I.C. Art. 12.03.)

Source Law

Art. 12.03. Any local mutual aid association or association defined in Article 14.37, Chapter 14, of this code, shall be permitted to operate in any county in this State. If the Articles of Association of such association provides for its operation in a limited portion or area of this State, such local mutual aid association or association defined in Article 14.37, Chapter 14, of this code, may hereafter amend such Articles of Association so as to permit it to operate and do business on a statewide basis, and after such amendment it shall be entitled to receive a certificate of authority covering all such territory, provided such association shall not be possessed of a permissive deficiency reserve as provided in Article 14.15 of this Chapter 14 of this Code.

Revisor's Note

(1) V.T.I.C. Article 12.03 refers to a local mutual aid association or "association

defined in Article 14.37, Chapter 14." Under the portion of V.T.I.C. Article 12.01 revised in this chapter as Section 886.001, the term "local mutual aid association" includes an entity governed by Section 888.201, which codifies V.T.I.C. Article 14.37. The revised law is drafted accordingly.

(2) V.T.I.C. Article 12.03 provides that certain local mutual aid associations may not hold a permissive deficiency reserve under V.T.I.C. Article 14.15. Sections 4, 5, and 6, V.T.I.C. Article 14.15, prescribe procedures related to a permissive deficiency reserve and require an association to begin complying with those sections not later than July 1, 1966, and to completely reduce any permissive deficiency reserve not later than December 31, 1983. An association that does not reduce its reserve as required by those sections is treated as insolvent. The revised law omits the reference to the permissive deficiency reserve as obsolete.

Revised Law

Sec. 886.106. CONNECTION WITH OTHER ASSOCIATIONS PROHIBITED. (a) A local mutual aid association may not have any connection with another local mutual aid association.

(b) An association may not contribute any form of salary or compensation to an executive officer of another association. (V.T.I.C. Art. 12.04.)

Source Law

Art. 12.04. There shall be no connection between any two associations operating under this chapter and no one association shall contribute anything by way of salary or compensation to any executive officer for the purposes of such other association.

Revised Law

Sec. 886.107. ANNUAL STATEMENT; FILING FEE. (a) For the filing of each annual statement, the department shall charge the appropriate fee. The fee must be:

(1) payable to the department; and

(2) deposited in the Texas Department of Insurance operating account.

(b) Article 1.31A applies to the fee. (V.T.I.C. Art. 12.18.)

Source Law

Art. 12.18. For the filing of each annual statement, the Board shall charge the fee prescribed by law, which shall be paid to the State Board of Insurance and must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund, and Article 1.31A of this code applies to that fee.

Revisor's Note

V.T.I.C. Article 12.18 requires fees to be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

Revised Law

Sec. 886.108. SURETY BOND. (a) A local mutual aid association's officer responsible for the funds of the association shall file with the department a surety bond.

(b) The surety bond must be:

(1) executed by a surety company authorized to do business in this state;

(2) satisfactory to the department; and

(3) payable in an amount and conditioned as specified by Section 887.054.

(c) This section does not apply to a local mutual aid association that:

(1) has a total membership of 1,000 or fewer members;

(2) charges $1 or less each for annual dues or assessments; and

(3) charges $2.50 or less for a membership fee.

(d) An association exempted under Subsection (c) shall file with the department a bond in the amount of $1,000 and conditioned as provided by Section 887.054. (V.T.I.C. Art. 12.05 (part).)

Source Law

Art. 12.05. . . .

(5) . . . Thereupon the Board shall require, and the officer of the

association designated to have charge of the funds of the association shall make and file a surety bond executed by a surety company authorized to do business in the State of Texas, satisfactory to the Board as surety, payable and in an amount and conditioned as required and specified in Article 14.08, Chapter 14 of this code.

Provided, however, that the provisions of this Article shall not apply to any local mutual aid association now organized and operating whose total membership shall at no time exceed one thousand (1,000) members and which shall never charge for annual dues or assessments in excess of One ($1.00) Dollar each, and whose membership fee shall at no time exceed Two Dollars and Fifty Cents ($2.50). However, such association thus exempted shall file a bond, conditioned as herein above provided, in the amount of One Thousand ($1,000.00) Dollars with the Board of Insurance Commissioners of Texas.

Revised Law

Sec. 886.109. VOLUNTARY DISSOLUTION. A local mutual aid association may dissolve by vote of the majority of the members at:

(1) a regular meeting called by the secretary; or

(2) a special meeting called for the purpose of considering dissolution. (V.T.I.C. Art. 12.13 (part).)

Source Law

Art. 12.13. Associations may dissolve at any time by vote of the majority of the members at a regular meeting called by the secretary or a special meeting called for the purpose of considering dissolution . . . .

Revised Law

Sec. 886.110. AUTOMATIC DISSOLUTION. A local mutual aid association is dissolved automatically and forfeits its right to engage in the business of insurance if:

(1) the association's membership falls below 25 percent of the maximum value of the policy issued; or

(2) the association's membership falls below 50 percent of the maximum value of the policy issued and the association fails to notify each member of the amount paid on the

preceding death claim when assessment is made. (V.T.I.C. Art. 12.13 (part).)

Source Law

Art. 12.13. . . . provided, however, that if any such association or society shall have engaged in business continuously for a period of ten (10) years, then it shall not automatically be dissolved nor forfeit its right to do business, at any time the membership shall fall below fifty (50%) per cent of the maximum value of the policy issued, but it shall become dissolved only in the event the membership shall fall below twenty-five (25%) per cent of the maximum value of the policy issued. Provided, further, that when membership becomes less than fifty (50%) per cent, the association will be dissolved automatically in event it fails to notify each member when assessment is made of the amount paid on the next preceding death claim.

Revisor's Note

(1) V.T.I.C. Article 12.13 refers to an association "engaged in business continuously for a period of ten (10) years." The revised law omits this reference as unnecessary because V.T.I.C. Article 22.21, which is revised in this chapter as Section 886.004 and which became effective August 28, 1961, provides that no new associations may be organized from or after that date. Therefore, any association currently engaged in the business of insurance has been in business for more than 10 years. The revised law is drafted accordingly.

(2) V.T.I.C. Article 12.13 refers to the "next preceding death claim." The revised law omits "next" as unnecessary. "[T]he preceding" means "next preceding."

(3) V.T.I.C. Article 12.13 provides in part for the dissolution of certain local mutual aid associations that have been in existence for six months or more or that have not operated for one year or longer. However, by its own terms, this part of Article 12.13 does not apply to local mutual

aid associations that have been engaged in the business of insurance for a period of at least 10 years. Since V.T.I.C. Article 22.21, revised in this chapter as Section 886.004, provides that a local mutual aid association may not be formed after August 28, 1961, any association currently in existence has been in operation for a period of at least 10 years. Consequently, the revised law omits as obsolete that part of Article 12.13 that applies to local mutual aid associations in existence for less than 10 years. The omitted law reads:

Art. 12.13. [Associations may dissolve at any time by vote of the majority of the members at a regular meeting called by the secretary or a special meeting called for the purpose of considering dissolution;] any class or group which has been in existence for six (6) months or more shall also be dissolved automatically and shall forfeit its right to do business at any time the membership shall fall below fifty (50%) per cent of the maximum value of the policy issued, or when any class or group shall cease to operate for a period of one (1) year, and no action by any supervisory officer of the state shall be necessary to such dissolution or forfeiture. In the event of said membership becoming less than fifty (50%) per cent of the maximum amount provided in said class or group, said members by a majority vote of said officers for them shall have the right to transfer and merge said members with any other society or association after obtaining the approval of the Board of Insurance Commissioners . . . .

[Sections 886.111-886.700 reserved for expansion]

SUBCHAPTER O. DISCIPLINARY PROCEDURES AND CRIMINAL PENALTY

Revised Law

Sec. 886.701. REVOCATION. Except as otherwise provided by law, the department may revoke the right of a local mutual aid association to engage in the business of insurance in this state only on:

(1) the judgment of a court;

(2) the filing of articles of dissolution by the

members of the association or by the officers on behalf of the members; or

(3) a filing showing that the association's membership has been merged and taken over by another association. (V.T.I.C. Art. 12.11.)

Source Law

Art. 12.11. The Board shall not revoke the right of any association to do business in this State except upon the judgment of a court of competent jurisdiction or upon the filing of articles of dissolution by the members of said association or the officers for them or upon a statement being filed with said Board showing that said membership had been merged and taken over by another society or association.

Revisor's Note

(1) V.T.I.C. Article 12.11 provides that the right of a local mutual aid association to engage in business may not be revoked except in certain limited circumstances. Article 12.11 is derived from, and substantively identical to, Section 22, Chapter 274, Acts of the 41st Legislature, Regular Session, 1929. Since enactment of Section 22, former V.T.I.C. Article 1.10(7), revised in this code as Chapter 82, has been amended to expressly permit revocation of the certificate of authority of an association. The revised law is drafted accordingly.

(2) V.T.I.C. Article 12.11 refers to a court "of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 886.702. GROUNDS FOR DISSOLUTION OR FORFEITURE. (a) In addition to any other penalties imposed on a local mutual aid association or on its members or officers, an association is subject to dissolution and forfeiture of its right to engage in the business of insurance if the association:

(1) ceases to engage in the business of insurance;

(2) falls below the requirements of this chapter;

(3) engages in the business of insurance without a certificate of authority;

(4) fails to make reports as required by law;

(5) refuses to submit to examination by the department or pay the cost of an examination;

(6) engages in the business of insurance in a fraudulent, illegal, or dishonest manner; or

(7) violates this chapter.

(b) The attorney general shall, at the request of the department, file any action necessary to wind up the affairs of an association to which Subsection (a) applies and provide for the appointment of a receiver if necessary.

(c) An action under this section must be brought in Travis County. (V.T.I.C. Art. 12.14.)

Source Law

Art. 12.14. If any association heretofore or hereafter doing a local mutual aid business as herein defined or as defined in Article 14.37, Chapter 14 of this code shall cease to operate, or shall fall below the requirements of this Chapter or shall undertake to operate without a permit or certificate of authority, or shall fail or refuse to make reports as and when by law required, or shall refuse to submit to examination or pay the cost thereof, or shall conduct its business in a fraudulent, illegal or dishonest manner, or shall violate any of the terms of this chapter, shall, in addition to any other penalties imposed on it or on its members or officers, subject itself to forfeiture of its right to do business and to dissolution; and the Attorney General shall at the request of the Board of Insurance Commissioners file such suit as may be necessary to wind up the affairs of such association and if necessary have a receiver appointed for that purpose, the venue of all of which suits shall be laid in Travis County, Texas.

Revisor's Note

V.T.I.C. Article 12.14 refers to operation as a local mutual aid association without a "permit or certificate of authority." The revised law omits as unnecessary the reference to the permit. Under V.T.I.C. Article 12.05, the Board of Insurance Commissioners issued a permit to a local mutual aid association during the period the association was forming. See Revisor's Note (1) following Subchapter A of this chapter. Under V.T.I.C. Article 22.21, revised as Section 886.004 of this chapter, a local mutual aid association may not be organized after August 28, 1961.

Revised Law

Sec. 886.703. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $500. (V.T.I.C. Art. 12.15.)

Source Law

Art. 12.15. Any person or persons who shall violate any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not more than Five Hundred ($500.00) Dollars.

CHAPTER 887. PROVISIONS APPLICABLE TO CERTAIN MUTUAL ASSESSMENT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

SUBCHAPTER B. GENERAL POWERS AND DUTIES; OFFICERS AND DIRECTORS

SUBCHAPTER F. CONTENTS OF APPLICATIONS AND INSURANCE CERTIFICATES

SUBCHAPTER G. ASSESSMENTS AND REVENUE

SUBCHAPTER H. MORTUARY AND EXPENSE FUNDS

SUBCHAPTER I. RESERVES

SUBCHAPTER J. CONVERSION TO LEGAL RESERVE INSURANCE COMPANY

SUBCHAPTER K. CONVERSION TO STOCK LEGAL RESERVE LIFE INSURANCE COMPANY

SUBCHAPTER L. GENERAL FINANCIAL REGULATION

CHAPTER 887. PROVISIONS APPLICABLE TO CERTAIN MUTUAL ASSESSMENT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 887.001. DEFINITIONS. In this chapter:

(1) "Assessment" means any money or thing of value, including premiums, paid in consideration of insurance provided by an insurance certificate.

(2) "Association" means an organization subject to this chapter.

(3) "Insurance certificate" means an insurance policy, contract of insurance, certificate of membership, or other document through which insurance is effected or evidenced.

(4) "Member" includes a certificate holder or any other insured of an association.

(5) "Membership fee" means the amount of the first assessment or assessments placed in the expense fund of an association and representing the cost of soliciting or procuring a member, as permitted by the department.

(6) "Mortuary fund" includes a mortuary fund, relief fund, claim fund, or similar fund. (V.T.I.C. Art. 14.02 (part); New.)

Source Law

Art. 14.02. The following terms when used in this chapter shall be defined:

"Association" shall refer to and include all types of organizations, corporations, firms, associations, or groups subject to the provisions of this chapter.

. . .

"Member" shall include policyholders or any persons insured by an association, by whatsoever means the insurance may be made effective.

"Certificate" shall include any insurance policy or contract of insurance, certificate of membership or other document through which insurance is effected or evidenced.

. . .

"Assessment" shall include premiums and mean any and all money or valuable thing paid in consideration of such insurance as is afforded by the certificate.

"Membership fee" shall be the amount of the first assessment or assessments permitted by the Board to be placed in the expense fund of associations, representing cost of soliciting or procuring the member.

Revisor's Note

(1) V.T.I.C. Article 14.02 refers to "organizations, corporations, firms, associations, or groups" subject to this chapter. The revised law omits the reference to "corporations, firms, associations, or groups" as included within the meaning of "organizations." It is clear from the context of V.T.I.C. Chapter 14 that a "group" must be organized to fall under that chapter. For example, V.T.I.C. Article 14.04, revised in part as Section 887.051, refers to required provisions of an association's bylaws, and V.T.I.C. Article 14.08, revised in part as Section 887.054, requires a surety bond covering certain officers of an association.

(2) V.T.I.C. Article 14.02 defines "board" as "the Board of Insurance Commissioners of the State of Texas." Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, abolished the Board of Insurance Commissioners and transferred its functions to the State Board of Insurance. Other provisions of V.T.I.C. Chapter 14 refer to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31, Insurance Code, defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. The revised law omits the definition of

"board," and throughout this chapter, references to the Board of Insurance Commissioners or the State Board of Insurance have been changed appropriately. The omitted law reads:

"Board" shall refer to the Board of Insurance Commissioners of the State of Texas.

(3) V.T.I.C. Article 14.02 defines "paid in full" and "full payment." The revised law omits the definition as unnecessary because in contexts in which the revised law refers to full payment of a claim, it is clear what the term "full payment" means. The omitted law reads:

"Paid in full" or "full payment" shall mean the payment of the full amount of maximum benefit due on the happening of the contingency insured against.

(4) V.T.I.C. Article 14.02 defines "insolvent" as meaning "any condition or situation which is so designated herein." In places in which an association's condition results in the association being regarded as insolvent (such as V.T.I.C. Article 14.31, revised as Section 887.207), the law clearly explains the condition that is treated as insolvency. Accordingly, the revised law omits the definition as unnecessary. The omitted definition reads:

"Insolvent" shall refer to and include any condition or situation which is so designated herein and which is violative of the provisions of this chapter.

(5) V.T.I.C. Article 14.02 defines "certificate" as any insurance policy or contract of insurance, certificate of membership, or other document through which insurance is effected or evidenced. Subsequent provisions of V.T.I.C. Chapter 14 use the term "certificate of authority," which is the document issued to an association that is authorized to engage in business in this state. To avoid confusion, the revised law defines "insurance

certificate" rather than "certificate" and substitutes that term as appropriate throughout this chapter. Article 14.02 also refers to "policyholders." Throughout this chapter where appropriate, the revised law substitutes "certificate holder" for "policyholder" to be consistent with "insurance certificate."

(6) The definition of "mortuary fund" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 887.002. PURPOSE. The primary purpose of this chapter and Chapter 888 is to secure to members and the beneficiaries of members the full and prompt payment of all claims, according to the maximum benefit provided under the insurance certificate. (V.T.I.C. Art. 14.29 (part).)

Source Law

Art. 14.29. It is the primary purpose of this chapter to secure to the members of the associations and their beneficiaries the full and prompt payment of all claims according to the maximum benefit provided in their certificates. . . .

Revised Law

Sec. 887.003. APPLICABILITY OF CHAPTER. (a) This chapter governs:

(1) local mutual aid associations;

(2) statewide mutual life associations;

(3) life, health, and accident associations;

(4) mutual assessment life, health, and accident associations;

(5) burial associations; and

(6) similar entities.

(b) Except as provided by Section 887.004, this chapter applies to insurance companies and associations, whether incorporated or not:

(1) that issue policies or certificates of insurance on the lives of individuals on a mutual assessment plan or that provide health and accident benefits on a mutual assessment plan or whose funds are derived from assessments on certificate holders or members; and

(2) that are not governed by:

(A) Chapter 841, 861, 882, 883, 885, 941, or 942;

or

(B) Chapter 5, Title 78, Revised Statutes, as provided by Section 18, Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929.

(c) This chapter does not apply to mutual fire insurance companies. (V.T.I.C. Arts. 14.01 (part), 14.03 (part), 14.54.)

Source Law

Art. 14.01. This chapter shall apply to and embrace all insurance companies and associations, whether incorporated or not, which issue policies or certificates of insurance on the lives of persons, or provide health and accident benefits, upon the so called mutual assessment plan, or whose funds are derived from the assessments upon its policyholders or members, and shall, in fact apply to all life, health and accident companies or associations which do not come within the provisions of Chapters 3, 8, 10, 11, 15, 18 or 19 of this code and Chapter 5 of Title 78, Revised Civil Statutes, 1925, and amendments thereto . . . .

This chapter shall include local mutual aid associations; statewide life; or life, health and accident associations; mutual assessment life, health and accident associations; burial associations; and similar concerns by whatsoever name or class designated, whether specifically named or not.

Art. 14.03. All associations operating under this chapter shall be mutual in character, but . . . .

Art. 14.54. Nothing in this chapter shall ever be construed to include or affect in any manner mutual fire insurance companies.

Revisor's Note

(1) V.T.I.C. Article 14.01 refers to "Chapter 5, Title 78, Revised Civil Statutes, 1925." That chapter was repealed by Section 18, Chapter 40, Acts of the 41st Legislature,

1st Called Session, 1929. That provision, which was amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, provides that the repeal of Chapter 5, Title 78, does not affect a company or association doing business under that chapter, and the company or association continues to be governed by that chapter. For the reader's convenience, the revised law includes a reference to the 1929 law continuing Chapter 5, Title 78, in effect for certain companies.

(2) V.T.I.C. Article 14.01 refers to "Chapters 3, 8, 10, 11, 15, 18 or 19 of this code and Chapter 5 of Title 78, Revised Civil Statutes, 1925, and amendments thereto." Subsequent provisions of V.T.I.C. Chapter 14 refer to various statutes "as amended." Throughout this chapter, the revised law omits the references to "amendments thereto" and "as amended" because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, and amendments of the statute.

(3) V.T.I.C. Article 14.01 refers to life, health and accident companies or associations that do not come within the provisions of V.T.I.C. Chapter 3. The relevant portions of Chapter 3, relating to the organization of domestic life, health and accident companies, are revised in Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 887.004. INAPPLICABILITY TO CERTAIN ORGANIZATIONS OF MEMBERS OF RELIGIOUS DENOMINATION. This chapter does not apply to an association that:

(1) is not operated for profit;

(2) is composed only of the members of a particular religious denomination;

(3) does not provide insurance benefits in an amount greater than $1,000 on any one individual; and

(4) does not pay any officer of the association a salary greater than $100 a month. (V.T.I.C. Art. 14.01 (part).)

Source Law

Art. 14.01. [This chapter shall apply to and embrace all insurance companies and associations,] . . . except that it shall not apply to associations not operated for profit composed only of the members of a particular religious denomination, and which do not provide insurance benefits in excess of One Thousand ($1,000.00) Dollars, on any one person and which do not pay any officer a salary in excess of One Hundred ($100.00) Dollars per month.

. . .

Revised Law

Sec. 887.005. DEPARTMENT OF PUBLIC SAFETY EMPLOYEE MUTUAL ASSOCIATION. Notwithstanding any other provision of this chapter, a mutual association for employees of the Department of Public Safety may provide coverage and benefits to retired officers and employees of that department. (V.T.I.C. Art. 14.17A.)

Source Law

Art. 14.17A. Notwithstanding any provision of this chapter, including Article 14.17, a mutual association for employees of the Department of Public Safety of the State of Texas may provide coverage and benefits to retired officers and employees of the department.

Revised Law

Sec. 887.006. CONSTRUCTION. (a) This chapter does not:

(1) enlarge the powers or rights of any association;

(2) enlarge the scope of an association's legal or corporate existence; or

(3) authorize the creation of any association or corporation to engage in the business of insurance described by Section 887.003(b) if that creation is not specifically permitted by law.

(b) The laws prohibiting or limiting creation of an association and the exercise of corporate power are not affected by this chapter. (V.T.I.C. Art. 14.01 (part).)

Source Law

Art. 14.01. . . .

This chapter does not enlarge the powers or rights of any of such associations nor enlarge the scope of their legal or corporate existence; nor authorize the creation of any association or corporation to do any of the sorts of business above indicated, where such creation is not now specifically permitted by law. The laws prohibiting or limiting such creation and the exercise of corporate power are not affected by this chapter.

Revised Law

Sec. 887.007. DEPOSIT OF FEES. The department shall deposit a fee collected under this chapter to the credit of the Texas Department of Insurance operating account. (V.T.I.C. Art. 14.60 (part).)

Source Law

Art. 14.60. All fees paid to the State Board of Insurance by all associations regulated by this chapter shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and . . . .

Revisor's Note

(1) V.T.I.C. Article 14.60 states that fees paid to the State Board of Insurance "shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund." Under Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

(2) V.T.I.C. Article 14.60, as amended by Chapter 622, Acts of the 68th Legislature, Regular Session, 1983, provides that fees paid to the State Board of Insurance shall be spent for specified purposes. The revised law omits that provision as impliedly repealed by V.T.I.C. Article 4.07, which provides that all fees paid to the department are available for use to pay salaries and other expenses arising out of the examination and licensing of insurance companies generally and investigations of violations of the insurance laws. Article 4.07, as amended by Chapter 249, Acts of the 70th Legislature, Regular Session, 1987, applies to "any and all" mutual insurance companies. The omitted

law reads:

Art. 14.60. [All fees paid] . . . shall be spent for the purpose of enforcing and carrying out the provisions of this chapter and other laws relating to the regulation and supervision of such associations. . . .

(3) V.T.I.C. Article 14.60, as amended by Chapter 622, Acts of the 68th Legislature, Regular Session, 1983, provides that fees paid to the State Board of Insurance may be spent as authorized by appropriation in a specified manner. The revised law omits that language as unnecessary. Section 6, Article VIII, Texas Constitution, provides that "[n]o money shall be drawn from the Treasury but in pursuance of specific appropriations made by law." Chapter 2103, Government Code, enacted as Article 6252-31, Revised Statutes, by Chapter 641, Acts of the 72nd Legislature, Regular Session, 1991, establishes specific procedures for withdrawing money from the state treasury. The omitted law reads:

Art. 14.60. [All fees paid . . . shall be spent] . . . as authorized by legislative appropriation only on warrants issued by the comptroller of public accounts pursuant to duly certified requisitions of the State Board of Insurance.

Revised Law

Sec. 887.008. INTERPRETATION OF CHAPTER BY COMMISSIONER. If a provision of this chapter appears obscure when applied to health, accident, or disability provisions in an insurance certificate issued by an association authorized to issue health, accident, or disability certificates, the commissioner shall interpret the provision in accordance with the expressed purpose of this chapter and looking to the full payment of claims and preserving to members the benefit of the association's protection. (V.T.I.C. Art. 14.36.)

Source Law

Art. 14.36. If any of the provisions of this chapter may appear obscure when applied to health, accident or disability provisions in certificates issued by associations authorized to issue health, accident or disability certificates, then the Board is directed to interpret same in accord with the expressed purpose and spirit of this chapter looking to the full payment of claims, and at the same time preserving to members the benefit of the protection afforded by such association.

Revised Law

Sec. 887.009. RULES. The commissioner may adopt reasonable rules to implement the purposes of this chapter. (V.T.I.C. Art. 14.39.)

Source Law

Art. 14.39. The Board is hereby authorized to promulgate reasonable rules and regulations to carry out the purposes of this chapter.

Revisor's Note

V.T.I.C. Article 14.39 refers to "rules and regulations." Throughout this chapter, the revised law omits the references to "regulations" because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

[Sections 887.010-887.050 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES; OFFICERS AND DIRECTORS

Revised Law

Sec. 887.051. BYLAWS. (a) An association shall submit to the department a copy of the association's bylaws. The department shall examine the bylaws and approve the bylaws if they comply with this chapter. The association shall conform the bylaws to this chapter if they are not in compliance.

(b) On approval of the bylaws under Subsection (a), an association shall file with the department a copy of the bylaws certified by the president or general manager and the secretary of the association.

(c) An association's bylaws must contain all things required by this chapter and may not contain any provision in conflict with this chapter.

(d) An association's bylaws must provide for periodic and special meetings of the membership. (V.T.I.C. Art. 14.04 (part).)

Source Law

Art. 14.04. Each corporation shall

submit to the Board of Insurance Commissioners a copy of its by-laws. Such by-laws shall contain all things required by this chapter and shall not contain any provision in conflict with this chapter. The by-laws shall provide for the periodical meetings of the membership and for special meetings . . . . The Board of Insurance Commissioners shall examine such by-laws, and if the same comply with the provisions of this chapter shall signify their approval of same. If they shall not be in accordance with the provisions hereof, then the corporation shall make said by-laws conform hereto. Upon approval of the by-laws a copy duly certified to by the president or general manager and the secretary of the corporation shall be filed with the Board of Insurance Commissioners, and . . . .

Revisor's Note

(1) V.T.I.C. Article 14.04 requires each "corporation" to submit a copy of its bylaws to the Board of Insurance Commissioners. Other provisions of V.T.I.C. Chapter 14 refer to a "corporation." Throughout this chapter, the revised law substitutes "association" for "corporation" because V.T.I.C. Article 14.01, revised in part as Section 887.003, provides that Chapter 14 applies to certain "insurance companies and associations, whether incorporated or not," and it is clear from the context of the article that the legislature did not intend the article to apply only to corporations.

(2) V.T.I.C. Article 14.04 provides that a copy of an association's bylaws certified by the Board of Insurance Commissioners (now the commissioner of insurance) "shall be received in evidence in all the courts of this State." The revised law omits the provision, enacted as part of the Insurance Code in 1951, as unnecessary because Rule 902, Texas Rules of Evidence, governs the admissibility of certified copies of public records, including "a document authorized by law to be recorded or filed and

actually recorded or filed in a public office." The cited rules were originally adopted, as Rules of Civil Evidence and Rules of Criminal Evidence, respectively, in 1983 and 1985, as provided by Sections 22.004 and 22.109, Government Code.

The cited rules apply to all proceedings to which the provision could apply. The Texas Rules of Evidence apply to civil proceedings in all courts other than small claims courts. Under Section 28.033, Government Code, proceedings in small claims courts are informal, so specific rules and statutes regarding receipt of evidence are unnecessary. The Texas Rules of Evidence also apply under Section 2001.081, Government Code, to contested case hearings governed by Chapter 2001, Government Code. The Texas Rules of Evidence apply to all criminal proceedings. The omitted law reads:

Art. 14.04. . . . a copy duly certified by such Board shall be received in evidence in all the courts of this State.

Revised Law

Sec. 887.052. AMENDMENT OF BYLAWS. (a) A majority of an association's members present at a regular meeting or at a meeting called for the purpose may amend the association's bylaws.

(b) An association shall mail to all members notice of any regular or special meeting at which amendments to bylaws will be considered. The notice must contain:

(1) a complete copy of the proposed amendments; and

(2) a fair explanation of the intent and effect of the proposed amendments.

(c) An amendment must be ratified by the association's board of directors.

(d) An association shall file with the department, in the same manner provided for filing bylaws under Section 887.051, an amendment adopted by the association. An amendment is not effective unless approved by the department.

(e) An association shall mail to each member a certified copy of any amendment to the association's bylaws at the next assessment after the amendment to the bylaws is made.

(f) On adoption of an amendment to an association's bylaws that might affect the insurance rights of the association's members, the association shall immediately send a copy of the amendment by first class mail to each affected member. The burden of proof is on the association to prove that the association mailed the amendment. (V.T.I.C. Arts. 14.04 (part), 14.05, 14.18 (part).)

Source Law

Art. 14.04. . . . All amendments shall be filed with the Board of Insurance Commissioners in a like manner as the original by-laws. A certified copy of any changes in the by-laws of each such corporation shall be mailed to each of the stockholders and/or members at the next assessment after such change in the by-laws is made.

Art. 14.05. By-laws of any association may be amended by a majority of the members of the association present when ratified by the Board of Directors, but only at meetings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered, must be mailed to all members. Such notices must contain full copies of the proposed changes in the by-laws and fair explanations of the intent and effect thereof.

Art. 14.18. . . . [All conditions of the certificate must be stated thereon, including such portions of the by-laws of the association as may affect the insurance rights of the parties in any material way;] . . . amendments to the by-laws which might affect such rights of members must forthwith be mailed by first-class mail to each certificate holder affected. In case of controversy the burden of proof shall be on the company to prove the amendment was mailed to the member. . . .

Revisor's Note

V.T.I.C. Article 14.04 refers to "stockholders and/or members" of an association. The revised law omits the reference to stockholders because, under

V.T.I.C. Article 14.02, revised as Section 887.001, "member" is the defined term and because "member" is the appropriate term to use in connection with the type of associations to which this chapter applies, as described by V.T.I.C. Article 14.01, revised as Section 887.003.

Revised Law

Sec. 887.053. IMMUNITY. An officer, director, or member of an association is not individually liable because of an insurance certificate issued by the association or a claim arising from an insurance certificate. (V.T.I.C. Art. 14.03 (part).)

Source Law

Art. 14.03. [All associations operating under this chapter shall be mutual in character, but] no liability shall rest upon any officer, director or member in an individual capacity by virtue of any policy issued or claims arising thereon.

Revisor's Note

V.T.I.C. Article 14.03 refers to a "policy" issued by an association. Throughout this chapter where appropriate, the revised law substitutes "insurance certificate" for "policy" because "insurance certificate" is the defined term and because it is clear from the context that the law applies to any type of document that is an insurance certificate, as that term is defined by V.T.I.C. Article 14.02, revised as Section 887.001.

Revised Law

Sec. 887.054. FINANCIAL OFFICER; BOND. (a) An association, by resolution entered in its minutes, shall designate an officer to be responsible for handling the association's funds. The president, secretary, or general manager of the association must certify a copy of the resolution, and the association shall file the copy with the department.

(b) Except as provided by Subsection (c) or (d), the association shall make and file a surety bond covering the officer designated under Subsection (a). The bond must:

(1) be issued by a corporate surety company authorized to issue surety bonds in this state;

(2) be satisfactory to the department and payable to the department for the use and benefit of the association;

(3) obligate the principal and surety to pay any monetary loss sustained by the association through an act of

fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by the officer, whether acting alone or with other persons, while employed as or exercising the powers of an officer designated under Subsection (a); and

(4) be in an amount of:

(A) at least $2,500; or

(B) if the association's mortuary fund exceeds $2,500, an amount equal to the lesser of:

(i) the amount of the association's mortuary fund; or

(ii) $20,000.

(c) Instead of the bond required by Subsection (b), the officer designated under Subsection (a) may deposit with the department cash or securities approved by the department in the amount and subject to the conditions applicable to the bond.

(d) Except as provided by Subsection (e), this section does not apply to a local mutual aid association that was operating on May 12, 1939, and has never:

(1) had a total membership of more than 1,000 members;

(2) charged more than $1 each for annual dues and assessments; and

(3) charged more than $2.50 for membership fees.

(e) An association to which Subsection (d) applies must file with the department a bond in the amount of $1,000, conditioned as provided for a bond under Subsection (b).

(f) Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted. (V.T.I.C. Art. 14.08 (part).)

Source Law

Art. 14.08. Such association shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the Board of Insurance Commissioners, designating therein some officer who shall be responsible in the handling of the funds of the corporation. Such association shall make and file for such officer a surety bond with a corporate surety company authorized to write surety bonds in this State, as surety, satisfactory and payable to the Board of Insurance Commissioners of Texas in the sum of not less than Two Thousand Five Hundred ($2,500.00) Dollars for the use and benefit of said association, and which shall at all times be equal to the amount of the mortuary fund on hand, not to exceed Twenty Thousand ($20,000.00) Dollars, which said bond shall obligate the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others, while employed as such officer or exercising powers of such office. In lieu of such bond any such officer may deposit with the Board of Insurance Commissioners cash (or securities approved by the Board) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond. Provided, however, that the provisions of this article shall not apply to any local mutual aid association now organized and operating whose total membership shall at no time exceed one thousand (1,000) members and which shall never charge for annual dues or assessments in excess of One ($1.00) Dollar each, and whose membership fee shall at no time exceed Two Dollars and Fifty Cents ($2.50). However, such association thus exempted shall file a bond, conditioned as hereinabove provided in the amount of One Thousand ($1,000.00) Dollars with the Board of Insurance Commissioners. . . . Successive recoveries on any of the bonds provided for in this article may be had on such bonds until same are exhausted.

Revisor's Note

(1) V.T.I.C. Article 14.08 refers to "dishonesty," "theft," "embezzlement," and "wrongful abstraction." The revised law omits "wrongful abstraction" because that term is included within the meaning of "dishonesty," "theft," and "embezzlement."

(2) V.T.I.C. Article 14.08 provides that Article 14.08 does not apply to a local mutual aid association that is "now organized and operating" and that meets certain other requirements. The quoted language can only be read as meaning "organized and operating

before the effective date of this Act." Article 14.08 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951. Section 2 of that act provides that "[n]othing contained in this Act shall be held or construed to effect any substantive change in the laws existing prior to the passage of this Act." Article 14.08 was derived from Article 5068-1, Vernon's Texas Civil Statutes. Article 5068-1 was enacted by Chapter 6, page 401, General Laws, Acts of the 46th Legislature, Regular Session, 1939; that act took effect May 12, 1939. Accordingly, the revised law includes a reference to May 12, 1939.

Revised Law

Sec. 887.055. BOND REQUIREMENTS FOR CERTAIN PERSONS. (a) In addition to the bond required by Section 887.054 and any other bond required by law, an association shall obtain a separate or blanket surety bond covering each other person who may have access to the association's mortuary funds. The bond must:

(1) be issued by a surety authorized by the department to engage in business in this state;

(2) be payable to the department for the use and benefit of the association;

(3) obligate the principal and surety to pay any monetary loss sustained by the association through an act of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by a covered person, whether acting alone or with other persons; and

(4) be in an amount determined by the department of at least $1,000 but not more than $5,000.

(b) Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted. (V.T.I.C. Art. 14.08 (part).)

Source Law

Art. 14.08. . . .

In addition to the bond required in the preceding paragraph, and in addition to the bond already required by law of certain associations subject to this chapter, each association shall procure for all other office employees, or other persons who may have access to any of its claim funds, separate bonds or blanket bonds with some surety licensed by the Board to do business in Texas, in an amount or amounts fixed by the Board with a minimum of One Thousand ($1,000.00) Dollars and a maximum of Five Thousand ($5,000.00) Dollars, payable to the Board of Insurance Commissioners for the use and benefit of the association obligating the principal and surety to pay such pecuniary loss as the association shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided for in this article may be had on such bonds until same are exhausted.

Revisor's Note

(1) V.T.I.C. Article 14.08 refers to a surety "licensed" by the Board of Insurance Commissioners. The revised law substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(2) V.T.I.C. Article 14.08 refers to "dishonesty," "theft," "embezzlement," and "wrongful abstraction." The revised law omits "wrongful abstraction" for the reason stated in Revisor's Note (1) to Section 887.054.

Revised Law

Sec. 887.056. RECOVERY ON BOND. (a) On receipt of information that an officer of an association has violated the terms of a bond under Section 887.054 or 887.055, the department shall demand from the officer a written explanation of the charge.

(b) If after an explanation under Subsection (a) the department is not satisfied regarding the existing facts in controversy, the department shall:

(1) notify the officer to appear in Travis County, not earlier than the 11th day or later than the 16th day after service of notice, with any records and other information the department considers proper; and

(2) conduct an examination into the charge against the officer.

(c) If after an examination under Subsection (b) the department is satisfied that the officer violated the terms of the bond, the department shall:

(1) immediately notify the company executing the bond;

(2) prepare a written statement covering the facts; and

(3) deliver the statement to the attorney general.

(d) On receipt of a statement under Subsection (c), the attorney general shall investigate the charges. If the attorney general is satisfied that the officer violated the terms of the bond, the attorney general shall:

(1) enforce the liability against the cash or securities provided as surety by the officer; or

(2) in the name of the commissioner, file suit in Travis County on the bond for the benefit of the bond's beneficiaries against the officer as principal and the sureties for the recovery of:

(A) any amounts due by the officer; and

(B) all costs of the suit. (V.T.I.C. Art. 14.09.)

<u>Source Law</u>

Art. 14.09. When the Board is informed that any officer of any such association has violated the terms of either of said bonds it shall demand a written explanation of such officer as to such charge, and if after such explanation the Board is not satisfied as to the existing facts in controversy it shall notify such officer to be and appear in Travis County with such records, writings, and other correspondence and facts as the Board deems proper, not earlier than ten (10) days or later than fifteen (15) days from service of notice, and it shall there conduct an examination into such affair, and if upon such examination the Board shall become satisfied that the terms of said bond have been violated by said officer the Board shall immediately notify the company executing said bond and prepare a written statement covering said facts and deliver same to the Attorney General of Texas, whose duty it shall be to investigate said charges and if satisfied that the terms of said bond have been violated he shall enforce the liability against said cash or securities, or he shall file suit on said bond in the name of the Board of Insurance Commissioners of Texas for the benefit of the beneficiaries thereof against said officer as principal and the

sureties of his bond for the recovery of said amounts due by said officer, and all costs of suit in some court of competent jurisdiction, in Travis County, Texas.

Revisor's Note

(1) V.T.I.C. Article 14.09 refers to "records, writings, and other correspondence and facts." The revised law substitutes "records and other information" for that phrase because "writings, and other correspondence and facts" is included within and synonymous with the meaning of "other information," which is more concise.

(2) V.T.I.C. Article 14.09 refers to a suit brought "in some court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 887.057. DEPOSIT. (a) An association shall, through the department, deposit with the comptroller an amount equal to the largest risk assumed by the association on any one life or individual.

(b) A deposit under this section must be cash or convertible securities subject to approval by the department.

(c) A deposit is liable for the payment of any final judgment against the association and is subject to garnishment after a final judgment against the association.

(d) An association shall immediately replenish a deposit under this section if the deposit is impounded or depleted. If the association fails to immediately replenish the deposit on demand by the department, the department may consider the association insolvent and take appropriate action.

(e) An association may not state in an advertisement, in a letter, in literature, or otherwise that it has made a deposit with the department as required by law, unless the association also states fully:

(1) the purpose of the deposit;

(2) the conditions under which the deposit is made; and

(3) the exact amount and character of the deposit.

(V.T.I.C. Art. 14.10.)

Source Law

Art. 14.10. Each association shall place with the comptroller through the Board of Insurance Commissioners a deposit equal to the largest risk assumed on any one life or person, which may be in cash or in convertible securities subject to approval by the Board. Such deposit shall be liable for the payment of all final judgments against the association, and subject to garnishment after final judgments against the association. When such deposit becomes impounded or depleted it shall at once be replenished by the association, and if not replenished immediately on demand by the Board, the association may be regarded as insolvent and dealt with as hereinafter provided.

When any association shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

Revised Law

Sec. 887.058. CHANGE OF ASSOCIATION'S NAME. An association may change its name by amending the association's charter if:

(1) the association submits the proposed amendment to the department for approval; and

(2) the department does not determine that the proposed name is confusing and misleading to the public. (V.T.I.C. Art. 14.14.)

Source Law

Art. 14.14. Any amendment to the charter of an association operating under this chapter changing the name of the association, must be submitted to the Board of Insurance Commissioners for approval; and the charter of any association operating under this chapter may not be amended to provide for changing its name to a name that is determined by the Board of Insurance Commissioners to be confusing and misleading to the public.

Revised Law

Sec. 887.059. BOOKS AND RECORDS. (a) An association shall keep the association's books and records in a form and manner that:

(1) accurately reflects the condition of the association or the facts essential to the association's faithful and effective operation; and

(2) is acceptable to the department.

(b) The association shall adopt forms or systems that are acceptable to the department and will most effectively serve the purpose described by Subsection (a)(1). (V.T.I.C. Art. 14.12.)

Source Law

Art. 14.12. All the records and books of each association shall be kept in the shape, form and manner acceptable to the Board, and if such records and books of any association are kept in such manner as not to reflect truly and accurately the condition of the association, or the facts essential to its faithful and effective operation, the association shall at once adopt forms or systems acceptable to the Board which will serve the purpose most effectively.

Revisor's Note

(1) V.T.I.C. Article 14.12 refers to the "shape, form and manner" of records and books. The revised law omits "shape" as included within the meaning of "manner."

(2) V.T.I.C. Article 14.12 refers to records and books that "truly and accurately" reflect the condition of an association. The revised law omits the reference to "truly" because "truly" is included within the meaning of "accurately."

Revised Law

Sec. 887.060. ANNUAL STATEMENT. (a) Not later than April 1 of each year, an association shall file with the department a sworn statement of the association's condition on the preceding December 31.

(b) A statement under this section must be on a form provided by the department for that purpose and include a complete account of:

(1) the association's real and contingent assets;

(2) the association's liabilities; and

(3) income to and disbursements from the association's mortuary and expense funds during the year. (V.T.I.C. Art. 14.15,

Sec. 1 (part).)

Source Law

Art. 14.15

Sec. 1. On or before the 1st day of April of each year, each association or company operating under the provisions of this Chapter shall file with the State Board of Insurance a complete and full sworn statement of its condition on the 31st day of December next preceding. Such statement shall exhibit all real and contingent assets, and all liabilities and an account of income and disbursements to and from the mortuary and expense funds during the year, and on forms which the State Board of Insurance shall furnish for the making of such annual statements. . . .

Revisor's Note

(1) Section 1, V.T.I.C. Article 14.15, refers to an "association or company operating under the provisions of this Chapter." Throughout this chapter, references to "company" in this context are omitted from the revised law because "association" is defined by V.T.I.C. Article 14.02 (revised as Section 887.001) to include any type of organizations, and it is clear from the context that the law applies to all types of entities regulated under this chapter.

(2) Section 1, V.T.I.C. Article 14.15, refers to the "next preceding" December 31. The revised law omits "next" as unnecessary. "The preceding" means "next preceding."

(3) Section 1, V.T.I.C. Article 14.15, provides that, after examining an association's annual statement, "the State Board of Insurance shall, if such report shows that the company or association is in all things complying with the requirements of law, issue such company or association a certificate of authority to transact its business in this State for the year next succeeding the filing of said report, or continue its certificate of authority in force as is provided in Article 1.14 of this

Insurance Code." The revised law omits the provision relating to the issuance of a certificate of authority for the "year next succeeding" as repealed. Section 1, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amended Section 1, V.T.I.C. Article 1.14, to require the State Board of Insurance to issue a certificate of authority to transact insurance business to any insurer that fully complies with applicable law. Under Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, repealed "[a]ll laws and parts of laws in conflict herewith . . . to the extent that they require periodic renewal of certificates of authority." The revised law omits the portion of Article 14.15 that refers to Article 1.14 because Article 1.14 applies by its own terms, and it is not necessary to include a reference to that article. The omitted law reads:

Sec. 1. . . . Upon examination of said annual statement, the State Board of Insurance shall, if such report shows that the company or association is in all things complying with the requirements of law, issue such company or association a certificate of authority to transact its business in this State for the year next succeeding the filing of said report, or continue its certificate of authority in force as is provided in Article 1.14 of this Insurance Code.

Revised Law

Sec. 887.061. REPORT ON CONDITION OF ASSOCIATION. The department may require from an association written reports on the condition of the association at any time the department considers advisable. The department may require that a report be verified by the oath of a responsible officer of the association. (V.T.I.C. Art. 14.57 (part).)

Source Law

Art. 14.57. The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such association whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the association. . . .

Revised Law

Sec. 887.062. EXAMINATION. Articles 1.15 and 1.16 apply to an association. (V.T.I.C. Art. 14.16.)

Source Law

Art. 14.16. Articles 1.15 and 1.16 of this code apply to corporations and associations regulated under this chapter.

Revised Law

Sec. 887.063. ADMITTED ASSETS. An association may include among its admitted assets, within the assets of the expense fund only, any asset designated as a net asset under Section 841.004. (V.T.I.C. Art. 3.01, Sec. 10(d) (part).)

Source Law

[Art. 3.01, Sec. 10]

(d) Companies regulated by the provisions of Chapter 14 of this Insurance Code, same being local mutual aid associations, local mutual burial associations and state-wide mutual assessment corporations, [and companies regulated by the provisions of Chapter 22 of this Insurance Code, same being stipulated premium companies,] may include among their admitted assets any asset herein designated as "net assets" except that companies regulated by the provisions of Chapter 14 of this Code may only include the same within the assets of the expense fund of any such company.

Revised Law

Sec. 887.064. DIVIDENDS. If the amount of an association's mortuary fund exceeds the amount of reserves required by Subchapter I, the association may pay dividends from the fund to its certificate holders. The amount of the dividends and the method of distribution of the dividends must be:

(1) equitable and nondiscriminatory; and

(2) approved by the department before payment.

(V.T.I.C. Art. 14.15, Sec. 8.)

Source Law

Sec. 8. In the event that the amount of the mortuary or claim fund of the company or association shall exceed the amount of the required reserves to be maintained, such company or association may pay dividends from said fund to its policyholders provided: (a) no permissive deficiency reserve exists at date of payment; and (b) the amount of the dividend and method of distribution thereof is equitable and nondiscriminating and approved in advance of payment by the State Board of Insurance.

Revisor's Note

Section 8, V.T.I.C. Article 14.15, provides that an association may pay dividends from its mortuary fund if "no permissive deficiency reserve exists at date of payment." The revised law omits the reference to a permissive deficiency reserve because the provisions of Article 14.15 relating to permissive deficiency reserves have been omitted as executed. See the revisor's note at the end of Subchapter I.

Revised Law

Sec. 887.065. MERGER. (a) An association may not merge with another association without the advance approval of the department.

(b) The department may grant approval under Subsection (a) only after the department:

(1) completely investigates the facts; and

(2) determines that the proposed merger is to the advantage of the members. (V.T.I.C. Art. 14.13 (part).)

Source Law

Art. 14.13. . . .

The associations subject to this chapter are hereby expressly prohibited from merging with another association . . . without the consent in advance of the Board of Insurance Commissioners which may be given only after complete investigation into the facts and determination that such . . . merger is to the advantage of members of the association or groups to be affected.

Revisor's Note
(End of Subchapter)

The revised law omits V.T.I.C. Article 14.14a. In part, Article 14.14a validates the charters of all companies "regulated by the provisions of Chapter 14 of the Insurance Code of Texas on the effective date hereof" that were "actively conducting an insurance business under Chapter 14 . . . on the effective date hereof." Article 14.14a was added by Chapter 125, Acts of the 58th Legislature, Regular Session, 1963, and took effect May 9, 1963. The validation provision is omitted from the revised law because it served its purpose on the day it took effect and, thus, is executed law. Section 311.031(a)(2), Government Code (Code Construction Act), applicable to the revised law, provides that the repeal of a statute does not affect any validation previously made under the statute.

V.T.I.C. Article 14.14a also provides that an existing association may amend its charter to extend the association's duration by filing an amendment to the association's charter within six months of the effective date of Article 14.14a. The revised law omits that provision as obsolete because any amendment would have to have been filed within six months of May 9, 1963.

The omitted law reads:

Art. 14.14a. This Article shall apply to every company or association regulated by the provisions of Chapter 14 of the Insurance Code of Texas on the effective date hereof. The charters of all such companies which are actively conducting an insurance business under Chapter 14 of the Insurance Code of Texas on the effective date hereof and which have been issued a permanent certificate of authority from the State Board of Insurance pursuant to Article 1.14 of the Insurance Code of Texas, authorizing such companies to transact an insurance business, are hereby in all things validated. Any such company or association shall have the right to amend its charter for the purpose of extending its period of duration, which may be perpetual, by filing an amendment for such purpose within six (6) months after the effective date of this Article in the same manner as would be done with any other amendment to its charter under existing laws. This Article shall not apply to any company or association which failed to comply with the provisions of Article 13.06 of the Insurance Code of Texas, nor to any company or association which has heretofore voluntarily surrendered its charter, nor to any company or association which has had its charter forfeited or cancelled by a Court of competent jurisdiction, nor to any company or association which has surrendered its certificate of authority and charter to the State Board of Insurance and has had a cessation of corporate existence under the provisions of Chapter 22 of the Insurance Code of the State of Texas.

[Sections 887.066-887.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 887.101. CERTIFICATE OF AUTHORITY REQUIRED. (a) Except as provided by Section 887.102, the department shall require an association or person to hold a certificate of authority issued by the department before the association or person may engage in the business of insurance in this state.

(b) If an association or person writes insurance without a certificate of authority issued under Subsection (a), the department shall notify the attorney general. The attorney general shall institute proceedings in the district court of Travis County to restrain the association or person from writing insurance without a certificate of authority. (V.T.I.C. Art. 14.17 (part).)

Source Law

Art. 14.17. It shall be the duty of the Board of Insurance Commissioners to require any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization to have a certificate of authority before being authorized to carry on any insurance business in this State. If, in any event, any such company, person, firm, association, corporation, local aid association, or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Board to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit; provided . . . .

Revisor's Note

V.T.I.C. Article 14.17 refers to "any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization." The revised law substitutes "association or person" for that phrase because "association," as defined by Section 887.001, includes any organization subject to this chapter, including a "corporation" or "firm, association, local mutual aid association, or any local association, company, or organization."

Revised Law

Sec. 887.102. EXEMPT ASSOCIATION; PERMIT. (a) An association is not required to hold a certificate of authority under Section 887.101 if the association:

(1) limits its membership to:

(A) the employees and the families of employees of a particular designated firm, corporation, or individual; or

(B) borrowers of a federal agency in this state and members of the borrower's immediate family who are living with the borrower and are not engaged in nonfarm work for their chief income;

(2) has been in existence for at least five years;

(3) is not operated for profit; and

(4) does not pay commissions.

(b) An association exempt under this section shall:

(1) make annual reports to the department, on forms provided for that purpose, showing the financial condition of the association, receipts and expenditures of the association, and any other facts required by the department; and

(2) obtain from the department a permit to engage in the business of insurance. (V.T.I.C. Art. 14.17 (part).)

Source Law

Art. 14.17. . . . no provision of this and the preceding Article shall be construed to apply to associations which limit their membership to the employees and the families of employees of any particular designated firm, corporation, or individual, nor shall it apply to associations which limit their membership to bona fide borrowers of a Federal agency in Texas and members of the borrower's immediate family who are living with him and who are not engaged in nonfarm work for their chief income, and which association has been in existence for at least five (5) years, and which are not operated for profit and which pay no commissions to anyone; provided, however, that all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures, and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. . . .

Revisor's Note

(1) V.T.I.C. Article 14.17 refers to "bona fide" borrowers of a federal agency. The revised law omits "bona fide" as unnecessary because the word does not add to the clear meaning of the law.

(2) V.T.I.C. Article 14.17 provides that an association's permit expires each year and may be renewed by the Board of Insurance Commissioners on approval of the association's financial statement. The revised law omits this provision as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter

194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . including . . . [Article] 14.17 . . . to the extent that they require periodic renewal of certificates of authority." For purposes of Article 1.14, a permit issued under Article 14.17 is equivalent to a certificate of authority. The omitted law reads:

Art. 14.17. . . . Such permit shall be for the current year or fractional part thereof and shall expire on the thirty-first day of May thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners.

Revised Law

Sec. 887.103. REFUSAL OF CERTIFICATE OF AUTHORITY OR PERMIT. (a) An association may not continue to engage in the business of insurance in this state if the commissioner notifies the association in writing of the commissioner's refusal to issue a certificate of authority or a permit.

(b) Not later than the 60th day after the date notice is received under Subsection (a), an association may file suit to review the commissioner's action in accordance with Subchapter D, Chapter 36. (V.T.I.C. Art. 14.06, Subsec. (a).)

Source Law

Art. 14.06. (a) No such corporation shall continue to operate in this State if the Board has notified it in writing of the refusal of the Board to issue it a certificate and permit. But any such corporation may within sixty (60) days after receiving such notice file a suit to review the said action of the Board in accordance with Article 1.04 of this code.

Revised Law

Sec. 887.104. REFUSAL OR REMOVAL FOR UNWORTHINESS OF PUBLIC TRUST. (a) The department may not issue a certificate of authority to an association if the department determines that an officer, employee, or member of the board of directors of the association is unworthy of the trust or confidence of the public.

(b) On issuance of a certificate of authority to an association, the commissioner shall order the removal of an officer, employee, or director of the association if the officer, employee, or director is found unworthy of the trust or confidence of the public.

(c) If the association does not remove an officer, employee, or director as required by an order issued under Subsection (b), the commissioner shall:

(1) revoke the certificate of authority; and

(2) treat the association as insolvent. (V.T.I.C. Art. 14.07.)

Source Law

Art. 14.07. The Board of Insurance Commissioners shall not issue to any association a certificate of authority to do business in Texas, when it shall find any officer, employee, or member of the board of directors to be unworthy of the trust or confidence of the public. After a certificate has been granted, the Board shall order the removal of any officer, employee, or director found unworthy of the trust, and if such officer, employee, or director be not removed, the Board shall cancel the certificate and proceed to deal with the association as though it were insolvent.

Revisor's Note

V.T.I.C. Article 14.07 states that the Board of Insurance Commissioners (now the commissioner of insurance) "shall cancel" a certificate of authority in certain circumstances. The revised law substitutes "revoke" for "cancel" because, in context, the terms are synonymous, and "revoke" is more frequently used. Similar changes are made throughout this chapter.

[Sections 887.105-887.150 reserved for expansion]

SUBCHAPTER D. MEMBERS

Revised Law

Sec. 887.151. CLASSES OF MEMBERS. (a) An association's constitution and bylaws shall state the number of members to be admitted in a class of the association.

(b) An association shall keep the accounts of the classes' mortuary assessments separate. The association may not use the funds of a class to pay claims for any other class.

(c) Not later than six months after the date a class of members is created, an association must build the class up to the required membership to pay claims in full. Until the required membership level is reached, the insurance certificates for the class may not provide for a benefit greater than $500, unless the association has sufficient funds to lawfully make the full payment of benefits.

(d) Creation of any new class is subject to advance approval of the department. (V.T.I.C. Art. 14.27.)

Source Law

Art. 14.27. The constitution and by-laws of each association shall state the number of members to be admitted in a class or group of the association. Accounts of the mortuary assessments of the several classes shall be kept separately; and the funds of one group or class shall not be used to pay claims for any other classes.

In the creation of a new group, club, or class, an association may have six (6) months from the date of its creation within which to build said group, club, or class up to the required membership to pay claims in full, provided in the interim the certificates provide for no more than a Five Hundred ($500.00) Dollar benefit, unless the association has funds out of which it may lawfully make and actually does make the full payment of benefits in the interim. Creation of any new group shall be subject to advance approval by the Board of Insurance Commissioners.

Revisor's Note

V.T.I.C. Article 14.27 refers variously to a "class or group" of members of an association, a "class" of members, a "group, club, or class" of members, and a "group" of members. Other articles in V.T.I.C. Chapter 14 use some or all of those terms or refer to a class or "other division of membership." In this context, the terms are synonymous. For consistency throughout this chapter, the revised law omits references to a "group," "club," or "other division" of members or substitutes "class" for "group" or "club."

Revised Law

Sec. 887.152. QUALIFYING MEMBERSHIP IN ASSOCIATION. (a) An individual must qualify under an association's bylaws to become a member of the association.

(b) An association must maintain the qualifying membership at all times. If an association fails to maintain the qualifying membership, the commissioner shall treat the association as insolvent. (V.T.I.C. Art. 14.11.)

Source Law

Art. 14.11. Membership in the association shall be confined to persons qualified under the provisions of the by-laws. Such membership shall equal the qualifying membership at all times and failure to maintain such, the association shall be considered insolvent and dealt with as hereinafter provided.

Revised Law

Sec. 887.153. VOTING RIGHTS OF MEMBERS. An association shall permit each member of the association to vote at any periodic meeting or special meeting of the members. (V.T.I.C. Art. 14.04 (part).)

Source Law

Art. 14.04. . . . [The by-laws shall provide for the periodical meetings of the membership and for special meetings,] at which meetings all members shall be permitted to vote. . . .

Revised Law

Sec. 887.154. MEMBERSHIP RECORDS. An association shall keep:

(1) a complete and correct roster of the association's members, with proper statistical records for determining by age or some other method the proper cost of insurance;

(2) accurate records of classes of memberships; and

(3) records of amounts of assessments paid by each member and by each class that show:

(A) how the funds are distributed between mortuary and expense funds for each class; and

(B) the amounts paid out of the funds of the whole membership or each class in death claims or other benefits. (V.T.I.C. Art. 14.13 (part).)

Source Law

Art. 14.13. Each association shall keep a complete and correct roster of its members with proper statistical records for the purpose of determining proper cost of insurance, by ages or otherwise, and shall keep accurate records of groups, classes or clubs or other division of memberships, if any; and shall keep records to show amounts paid in on assessments by each member and each group; and as to groups, must show how the funds are distributed between expense and mortuary or relief funds, and showing the amounts paid out of the funds of the whole membership or each group in death claims or other benefits.

. . .

Revised Law

Sec. 887.155. TRANSFER OF MEMBERSHIP OR MERGER OF CLASSES. (a) Without advance approval of the department, an association may not:

(1) transfer any part or class of membership or all membership to another association; or

(2) merge classes or transfer a member from one class to another in the association.

(b) The department may grant approval under Subsection (a) only after the department:

(1) completely investigates the facts; and

(2) determines that the proposed merger or transfer is to the advantage of the members or classes affected by the merger or transfer. (V.T.I.C. Art. 14.13 (part).)

Source Law

Art. 14.13. . . . The associations subject to this chapter . . . are prohibited from "transferring" any part or group of membership, or all the membership to another association or from merging groups or transferring members from one group to another in an association without the consent in advance of the Board of Insurance Commissioners which may be given only after complete investigation into the facts and determination that such transfer or merger is to the advantage of members of the association or groups to be affected.

[Sections 887.156-887.200 reserved for expansion]

SUBCHAPTER E. POWERS AND DUTIES RELATING TO INSURANCE AND COVERAGES

Revised Law

Sec. 887.201. LIMIT ON LIFE INSURANCE. An association may not insure an individual life for more than $5,000. (V.T.I.C. Art. 14.18 (part).)

Source Law

Art. 14.18. . . .

It shall be unlawful for any association to assume liability on a life insurance risk on any one life in an amount in excess of Five Thousand ($5,000.00) Dollars.

. . .

Revised Law

Sec. 887.202. STIPULATED PREMIUM PLAN; DEDUCTION OF UNPAID PREMIUM BALANCE. (a) An association may issue an insurance certificate on a stipulated premium plan that provides for the insured to pay regular premiums weekly, monthly, quarterly, semiannually, or annually, as determined by the insured.

(b) An association may issue an insurance certificate that provides that on the maturity of benefits payable under the certificate any balance of premium for the certificate year remaining unpaid is deducted from the benefits payable. (V.T.I.C. Art. 14.21 (part).)

Source Law

Art. 14.21. Any insurance company or association licensed by the Board of Insurance Commissioners to operate under this chapter may issue policies on the stipulated or specified premium plan which allows the insured the privilege of paying regular premiums weekly, monthly, quarterly, semi-annually, or annually, as he may choose from time to time. Such policies may also provide that upon the maturity of benefits payable under the policy or certificate any balance of premium for the current policy year remaining unpaid shall be deducted from the benefits payable. . . .

Revisor's Note

(1) V.T.I.C. Article 14.21 refers to a "stipulated or specified premium plan." The revised law omits the reference to a

"specified premium plan" because "specified premium plan" is included within the meaning of the phrase "stipulated premium plan."

(2) V.T.I.C. Article 14.21 provides that it applies to "all outstanding policies." It is clear that the legislature included the provision regarding "outstanding policies" to extend the application of the article to policies outstanding on the effective date of the article. The provision, having accomplished its purpose on the date the article became effective, is executed law. Therefore, the revised law omits the provision as unnecessary. The omitted law reads:

Art. 14.21. . . . The provisions of this article shall apply to all outstanding policies already containing such a provision.

Revised Law

Sec. 887.203. ISSUANCE OF LIFE INSURANCE POLICY BY CERTAIN ASSOCIATIONS. (a) A local mutual aid association or statewide mutual assessment company that has a mortuary fund and expense fund with a combined value of at least $100,000 greater than the liabilities of the combined funds may issue a life insurance policy in the same manner as a company organized under Chapter 841.

(b) An insurance policy issued as provided by Subsection (a):

(1) may not insure an individual life for more than $5,000;

(2) must be reserved as required for a company organized under Chapter 841; and

(3) may be issued only on an endowment or limited pay basis. (V.T.I.C. Art. 14.64.)

Source Law

Art. 14.64. Each local mutual aid association or statewide mutual assessment company possessing a mortuary fund and expense fund combined in at least the sum of $100,000.00 above all liabilities of such combined funds may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that: (1) no individual life shall be insured for more than $5,000.00, (2) each such policy shall be reserved as required under the provisions of Chapter Three of this Insurance Code, and (3) each such life policy shall be issued only upon an endowment or limited pay basis.

Revisor's Note

V.T.I.C. Article 14.64 refers to policies of life insurance authorized and permitted under V.T.I.C. Chapter 3 and to the reserve requirements of V.T.I.C. Chapter 3. The portions of Chapter 3 that relate to the organization of companies that are authorized to write that type of life insurance and that are subject to the appropriate reserve requirements are revised as Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 887.204. RENEWAL OR REINSTATEMENT OF INSURANCE CERTIFICATE. (a) If an insurance certificate terminates for any reason and the association's rules provide that a reinstated certificate is regarded as a new certificate, an application for reinstatement must state in at least 10-point type that:

(1) the same rules that apply to the original certificate apply to the reinstated certificate; and

(2) the association may invalidate the certificate within the contestable period for a false statement regarding the applicant's health or physical condition or another matter material to the risk.

(b) On reinstatement of an insurance certificate, an association shall send to the certificate holder by first class mail a copy of the application for reinstatement. The burden of proof is on the association to prove that the association mailed the application.

(c) If a renewal insurance certificate is issued after termination of an insurance certificate, the association shall attach to the renewal insurance certificate a copy of the application for reinstatement. The application is part of the renewal insurance certificate.

(d) If an association renews or reinstates an insurance certificate after termination of the certificate, the association shall divide the reinstated member's payments between the funds in the same percentage as is required of regular payments in the association's bylaws, except that if the period between termination and reinstatement is nine months or longer, the association may:

(1) charge a reinstatement fee not greater than the membership fee; and

(2) place the fee in the expense fund.

(e) A renewal or reinstatement certificate may not be contestable for any cause except nonpayment of assessments for a period longer than six months from the date of renewal or reinstatement, except that if the renewal or reinstatement occurs within the certificate's original two-year contestable period, the contestable period may be extended for six months from the date it would have originally expired. (V.T.I.C. Art. 14.19.)

Source Law

Art. 14.19. In case a certificate shall terminate for any reason, and in case it shall be a rule of the association that all reinstated certificates shall be regarded as new certificates, then the application for reinstatement shall carry the statement in at least ten point type that the same rules apply to it as to the original certificate, and that it can be invalidated within the contestable period for false statements respecting the health or physical condition of the applicant, or other matters material to the risk. A true and correct copy of the application for reinstatement shall be mailed by first-class mail to the certificate holder upon the reinstatement of the certificate. In case of controversy the burden of proof shall be on the association to prove the copy of reinstatement application was mailed to the member. In the event a renewal certificate is issued, such renewal certificate shall have a copy of the application for reinstatement attached and made a part thereof.

It is specifically provided, however, that in case an association shall renew or reinstate a certificate after termination, the payments by the reinstated member shall be divided between the funds in the same percentage as is required of regular payments in the particular by-laws, unless nine (9) months have elapsed between termination and reinstatement. If nine (9) months have elapsed between termination and reinstatement, a reinstatement fee not in excess of the membership fee may be charged and placed in the expense fund. Furthermore, in case of renewal or reinstatement, the renewal or reinstatement certificate shall not be contestable for any cause except nonpayment of assessments for longer than six (6) months from date thereof, unless the reinstatement or renewal is within the original two (2) year contestable period, in which case the same may be extended for six (6) months from the date on which it would have originally expired.

Revisor's Note

V.T.I.C. Article 14.19 refers to a "true and correct" copy of an application for reinstatement of an insurance certificate. The revised law omits the quoted language as unnecessary because "true and correct" is included within the meaning of "copy." For example, the absence of "true and correct" before "copy" does not imply that one can make a fraudulent copy of a document required by statute.

Revised Law

Sec. 887.205. LIFE INSURANCE CERTIFICATE BENEFICIARIES. (a) An association may pay death benefits only to:

(1) a member's spouse;

(2) a member's relative by blood to the fourth degree or by marriage to the third degree;

(3) a person actually dependent on the member;

(4) a creditor, estate, or other person with an insurable interest; or

(5) a purely charitable or religious institution.

(b) A beneficiary of a life insurance certificate forfeits the beneficiary's interest in the certificate if the beneficiary is the principal or an accomplice in wilfully bringing about the death of the insured. The nearest relative of the insured is entitled to the proceeds of an insurance certificate forfeited under this subsection. (V.T.I.C. Art. 14.28.)

Source Law

Art. 14.28. The payment of death benefits shall be confined to the wife or husband of a member, or relatives by blood to the fourth degrees, or by marriage to the third degree, or to persons actually dependent upon the member, and creditor, estate or any one having an insurable interest or any purely charitable or religious institution.

The interest of a beneficiary in a life

insurance policy or contract heretofore or hereafter issued shall be forfeited when the beneficiary is the principal or an accomplice in willfully bringing about the death of the insured. When such is the case the nearest relative of the insured shall receive said insurance.

Revised Law

Sec. 887.206. PAYMENT OF CLAIM; PROOF OF CLAIM. (a) An association shall pay each claim under an insurance certificate in full not later than the 60th day after the date of receipt of due proof of claim.

(b) Written notice of a claim given to an association is considered due proof of claim if the association does not provide the claimant with the forms usually provided for filing claims before the 16th day after the date notice is received.

(c) If an association is unable to pay a valid claim in full within the time prescribed by Subsection (a), the commissioner shall treat the association as insolvent. (V.T.I.C. Art. 14.29 (part).)

Source Law

Art. 14.29. . . . It is therefore required of all associations that all claims under certificates be paid in full within sixty (60) days after receipt of due proof of claims.

Written notice of claim given to the association shall be deemed due proof in the event the association fails upon receipt of notice to furnish the claimant, within fifteen (15) days, such forms as are usually furnished by it for filing claims.

Any association which shall become unable to pay its valid claims in full within sixty (60) days after due proofs are received, shall for the purpose of this chapter be regarded as insolvent, and dealt with as is more fully provided hereinafter.

Revised Law

Sec. 887.207. EXCEPTION TO FULL PAYMENT REQUIREMENT: ASSESSMENT-AS-NEEDED ASSOCIATIONS. (a) Section 887.206 does not apply to a class organized before May 12, 1939, and operating on the postmortem or assessment-as-needed plan on that date.

(b) An association with a postmortem or assessment-as-needed class to which Subsection (a) applies may continue to operate on the plan only if:

(1) the class has a sufficient membership at the assessment rate charged to produce for the mortuary fund at least 50 percent of the maximum value of the largest certificate in the class; and

(2) the association receives the amount required by Subdivision (1).

(c) If the membership of a class is sufficient in number to pay more than 50 percent but less than 100 percent of the maximum value of the largest certificate in the class, an officer of the association shall print on each assessment notice the percentage of the maximum value of the certificate actually paid on the last claim for death benefits in the class.

(d) If the amount realized on an assessment is not sufficient to pay 50 percent of the maximum amount of promised benefits as shown on the certificate, the commissioner shall treat the association as insolvent.

(e) Any benefits paid by an association operating on a postmortem or assessment-as-needed basis are dependent on the amount realized from assessments on the membership. Each of the association's insurance certificates must state:

(1) that any benefits paid are dependent on the amount realized from assessments on the membership; and

(2) the certificate's maximum payment.

(f) An association or a class in an association organized after May 12, 1939, may not operate on the postmortem or assessment-as-needed plan. (V.T.I.C. Arts. 14.02 (part), 14.31.)

Source Law

Art. 14.02. The following terms when used in this chapter shall be defined:

. . .

"Face of certificate" shall refer to the maximum amount of promised benefits, as shown on the certificate.

. . .

Art. 14.31. The provisions of this chapter requiring the full payment of claims shall not apply to any groups, club, or class previously organized and now operating on the post-mortem or assessment-as-needed plan and any association having such a group, club, or class may continue to operate it on said plan so long as any such group, club, or class has a sufficient membership at the assessment rate charged to produce, and so long as it does produce, for the mortuary or relief fund at least fifty (50%) per cent of the maximum value of the largest policy in said group, club, or class. In the event the membership of any group, club, or class is only sufficient in number to pay between fifty (50%) per cent and one hundred (100%) per cent of the maximum value, it shall be the duty of the officer of said association to have printed on each assessment notice the percentage of the maximum value of the certificate actually paid on the last death claim in said group, club, or class. Provided further, that no association and no group, club, or class in any association shall hereafter be organized to operate on the post-mortem or assessment-as-needed plan.

If on any assessment the amount realized is not sufficient to pay fifty (50%) per cent of the face of the certificate, the association shall be deemed insolvent and dealt with as hereinafter provided.

The benefits to be paid by such association shall be dependent upon the amount realized from assessments upon the membership, and the certificates issued shall so provide; and the certificates shall also state the maximum to be paid.

Revisor's Note

V.T.I.C. Article 14.31 refers to a class "previously organized and now operating" on the postmortem or assessment-as-needed plan. The quoted language can only be read as meaning "organized and operating before the effective date of this Act." Article 14.31 also provides that an association may not "hereafter" operate on the postmortem or assessment-as-needed plan. The revised law substitutes "organized before May 12, 1939, and operating . . . on that date" for "previously organized and now operating" and substitutes "after May 12, 1939," for "hereafter" for the reason stated in Revisor's Note (2) to Section 887.054. Article 14.31 was enacted by the same act that enacted Article 14.08, and the discussion in the revisor's note relating to Article 14.08 applies equally to Article

14.31.

Revised Law

Sec. 887.208. CONTESTED CLAIMS. (a) An association may not contest a claim:

(1) only for delay or for a captious or inconsequential reason; or

(2) to force settlement at less than full payment.

(b) An association shall notify a claimant of the association's intent to deny liability on a claim not later than the 60th day after the date the association receives due proof of claim.

(c) An association that does not notify a claimant as provided by Subsection (b) is presumed as a matter of law to have accepted liability on the claim.

(d) The commissioner shall revoke the certificate of authority of any association the commissioner finds is operating fraudulently or improperly contesting claims.

(e) An association shall report to the department the costs of contests in the annual statement under Section 887.060. The report must be verified by an officer of the association. (V.T.I.C. Art. 14.30 (part).)

Source Law

Art. 14.30. . . . claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. Therefore, if liability is to be denied on any claim, the association is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

The Board shall cancel the certificate of authority of any association found to be operating fraudulently or improperly contesting its claims.

Reports regarding the costs of contests must be made under oath of an officer of the association, with the annual report of all associations to the Board.

Revisor's Note

V.T.I.C. Article 14.30 provides that an association may contest claims "for valid reasons" but may not contest a claim for delay or for certain other reasons. The revised law omits the quoted language as unnecessary because prohibiting an association from contesting a claim for certain reasons does not imply that the association may not otherwise contest a claim for a valid reason. The omitted law reads:

Art. 14.30. . . . It shall not be unlawful for an association to contest claims for valid reasons; but . . . .

Revised Law

Sec. 887.209. VENUE. An action brought against an association that grows out of or is based on any right of claim or loss or proceeds due, arising from or predicated on any claim for benefits under an insurance certificate issued by the association, may be brought in:

(1) the county where the certificate holder or beneficiary instituting the action resides; or

(2) the county of the principal office of the association. (V.T.I.C. Art. 14.35.)

Source Law

Art. 14.35. In all actions brought against corporations operating under and subject to this chapter growing out of or based upon any right of claim or loss or proceeds due, arising from or predicated upon any claim for benefits under any policy or contract of insurance issued by such corporation, venue shall lie in the county where the policyholder or beneficiary instituting such suit resides or in the county of the principal office of such corporation.

Revisor's Note

V.T.I.C. Article 14.35 refers to "any policy or contract of insurance." The revised law substitutes "insurance certificate" for "policy or contract of insurance" because V.T.I.C. Article 14.02, revised as Section 887.001, defines "insurance certificate" as including "any insurance policy or contract of insurance."

Revised Law

Sec. 887.210. REINSURANCE. (a) An association may enter into a reinsurance agreement with a legal reserve company that:

(1) is authorized to write life, health, and accident

insurance in this state; and

(2) has capital or surplus of at least $100,000.

(b) A reinsurance agreement under this section is subject to the commissioner's approval.

(c) An association may not pay more out from its mortuary fund for reinsurance under this section than is received at the time of reinsurance by the mortuary fund on the insurance certificates or members reinsured. (V.T.I.C. Art. 14.62 (part).)

Source Law

Art. 14.62. Companies and associations operating under the provisions of this Act may enter into reinsurance contracts or agreements with legal reserve companies authorized to write life, health, and accident insurance in this State with capital or surplus of at least One Hundred Thousand Dollars ($100,000), and . . . . Provided, that such reinsurance contracts or agreements shall be subject to the approval of the Board of Insurance Commissioners of Texas, and that no company or association shall pay more out of its mortuary or claim fund for such reinsurance than is currently received by the mortuary or claim fund on the policies or members reinsured. . . .

Revisor's Note

(1) V.T.I.C. Article 14.62 refers to "contracts or agreements." The reference to "contracts" is omitted from the revised law because "contract" is included within the meaning of "agreement."

(2) V.T.I.C. Article 14.62 requires the Board of Insurance Commissioners to issue instructions on reinsurance agreements under that article "[w]ithin thirty (30) days from the effective date of this Act." The revised law omits that provision as obsolete. Article 14.62 was derived from Chapter 144, Acts of the 52nd Legislature, Regular Session, 1951. The effective date of that act was September 7, 1951. The omitted law reads:

Art. 14.62. . . . Within thirty (30) days from the effective date of this Act, the Board of Insurance Commissioners shall issue instructions outlining the conditions under which such contracts or agreements will be approved.

[Sections 887.211-887.250 reserved for expansion]

SUBCHAPTER F. CONTENTS OF APPLICATIONS AND INSURANCE CERTIFICATES

Revised Law

Sec. 887.251. GENERAL REQUIREMENTS FOR INSURANCE CERTIFICATE AND APPLICATION FORMS; INCONTESTABILITY. (a) An insurance certificate issued by an association must include:

(1) any condition of the certificate, including any portion of the bylaws of the association that affects the insurance rights of the parties in any material way; and

(2) a statement that the certificate is issued subject to:

(A) the association's constitution and bylaws; and

(B) any amendments to the constitution and bylaws approved by the commissioner.

(b) An insurance certificate must provide that a certificate in force for two years becomes incontestable, except for nonpayment of dues or assessments, on the second anniversary of the date of issuance, if the insured does not die before that date.

(c) An insurance certificate issued by an association or an application for the certificate may not contain language or be in a form that misleads the certificate holder or applicant about the kind of insurance provided under the certificate. (V.T.I.C. Arts. 14.04 (part), 14.18 (part), 14.22.)

Source Law

Art. 14.04. . . . All policies issued by a corporation under this chapter shall provide that said policy is subject to the by-laws of the corporation and all future amendments thereto. . . .

Art. 14.18. . . .

All conditions of the certificate must be stated thereon, including such portions of the by-laws of the association as may affect the insurance rights of the parties in any material way; and . . . . Each certificate must provide that it shall be incontestable, after having been in force during the lifetime of the insured for a period of two years from date of issue, except for non-payment of dues or assessments. . . . No certificate issued by such association, nor any application for the certificate shall contain language or be in such form as to mislead the applicant or the policyholder as to the type of insurance afforded.

. . .

Art. 14.22. Certificates issued by an association shall state that said certificate is issued subject to all the terms of the constitution and by-laws of the association then in force and as the same might thereafter be amended and that said certificate shall be governed by such by-laws and constitutional provisions that the Board of Insurance Commissioners shall theretofore and thereafter approve.

Revised Law

Sec. 887.252. APPLICATION FOR INSURANCE CERTIFICATE. (a) An application for an insurance certificate issued by an association must be signed by the applicant. If the applicant is a minor, the application may be signed by a parent or guardian.

(b) The application for an insurance certificate that provides that a misstatement relating to the applicant's health or physical condition may void the certificate within the contestable period must state that provision in language approved by the commissioner. The statement must be in at least 10-point type.

(c) An association shall attach to an insurance certificate a copy of the application for the certificate. The application is part of the insurance certificate.

(d) In the absence of fraud, each statement in an application for an insurance certificate is regarded as a representation and not a warranty. (V.T.I.C. Art. 14.18 (part).)

Source Law

Art. 14.18. . . .

An application for each certificate must be signed by the applicant, unless the applicant is a minor, in which event the application may be signed by a parent or guardian; and a copy thereof must be attached to and made part of such certificate. If the certificate is to provide that misstatement as to the health or physical condition of the applicant may void the policy within the contestable period, the application shall so state in not less than ten point type in language acceptable to the Board. All statements in the application shall in the absence of fraud be regarded as representations and not warranties.

. . .

Revised Law

Sec. 887.253. LIFE INSURANCE CERTIFICATE FORMS. (a) A life insurance certificate issued by an association must include:

(1) on the front page of the certificate, a definitive statement of the amount of the death benefit to be paid; and

(2) a plain statement of the circumstances or conditions under which the benefit is to be paid.

(b) A life insurance certificate must provide that if the age of the insured is misstated, the amount of insurance is the amount that the premium paid would have purchased if the age had been stated correctly, based on rates in effect when the insured dies. (V.T.I.C. Art. 14.18 (part).)

Source Law

Art. 14.18. Every policy or certificate of insurance issued by an association shall state definitely on the front page the amount of death benefit to be paid, and the circumstances or conditions under which it shall be paid shall be plainly stated in the policy. . . . It shall also provide that in case the age of the insured is misstated, the amount of insurance shall be that which the premium actually paid would purchase at the correct age, based on rates in force at the time of the death of the insured. . . .

Revisor's Note

V.T.I.C. Article 14.18 refers to a "policy or certificate of insurance." The reference to "policy" is omitted from the revised law for the reason stated in the revisor's note to Section 887.209.

Revised Law

Sec. 887.254. HEALTH AND ACCIDENT INSURANCE CERTIFICATE FORMS. An insurance certificate issued by an association must include a plain statement of each health, accident, or other benefit under the certificate and the terms under which each benefit is paid. (V.T.I.C. Art. 14.18 (part).)

Source Law

Art. 14.18. . . . Every health, accident or other benefit shall be plainly stated in the policy, and the terms and conditions under which they shall be paid shall be stated plainly in the policy.

. . .

Revisor's Note

V.T.I.C. Article 14.18 refers to the "terms and conditions" of insurance certificates. The reference to "conditions" is omitted from the revised law because "conditions" is included within the meaning of "terms."

Revised Law

Sec. 887.255. LIFE INSURANCE BENEFIT REDUCTIONS AND EXCLUSIONS. (a) An association may, with the commissioner's approval, issue an insurance certificate that provides for:

(1) reduced benefits if the insured:

(A) dies or is injured while engaged in:

(i) military, naval, or aerial service or aerial flight during peace or war; or

(ii) a hazardous occupation specified in the certificate;

(B) dies by the insured's own hand, regardless of whether the insured was sane or insane; or

(C) dies or is injured by mob violence or legal execution; or

(2) reduced or excluded benefits for sickness from certain causes specified in the certificate.

(b) The front page of an insurance certificate must call attention to any reduction or exclusion of benefits provided by the certificate. The circumstances or conditions under which the reduction or exclusion applies must be stated plainly in the certificate.

(c) If an insurance certificate that provides natural death benefits contains a provision for reducing the greatest death benefit provided by the certificate for a specified insured for a reason other than a reason specified by Subsection (a):

(1) the reduced death benefit for the insured must at all times when the reduction is in effect equal or exceed 120 percent of the total premium paid on that certificate by the insured; and

(2) the reduction must end before the fifth anniversary of the date the certificate is issued.

(d) Subsection (c) does not apply to a life insurance certificate on which the reduction of the death benefit does not apply at the time of the death of the specified insured.

(e) If a life insurance certificate provides for an increase of the initial amount of the death benefit for a specified insured one or more times during the first five years of the certificate, the amount of the death benefit for the insured must at all times during the period of the increasing benefit equal at least 120 percent of the premiums paid on that certificate by the insured during the period of the increase.

(f) Subsection (e) does not apply to a life insurance certificate that has been in force for more than five years from the date the certificate was issued.

(g) Subsections (c)-(f) do not apply to a family group life insurance certificate described by Section 887.402.

(h) This section does not apply to health and accident insurance policies. (V.T.I.C. Art. 14.20 (part).)

Source Law

Art. 14.20

Sec. 1. Any company or association licensed and operating under this chapter, may with the approval of the State Board of Insurance issue policies providing for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service, or aerial flight in time of peace or war; or in case of death of the member by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy; or if death or injury is caused by mob violence or legal execution; or reduce or exclude benefits for sickness from certain named causes. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided herein, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy. . . .

Sec. 2. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Section 1 of this Article 14.20) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Section 1 of this Article 14.20) shall not exceed five years from issue date. This Section 2 of this Article 14.20 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

Sec. 3. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Section 3 of this Article 14.20 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

Sec. 4. The provisions of Section 2 and Section 3 of this Article 14.20 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 2(a)(2) of Article 14.15 of this Insurance Code.

Sec. 5. The provisions of this Article 14.20 shall not apply to health and accident policies.

Revisor's Note

Section 1, V.T.I.C. Article 14.20, provides that Section 1 applies to "all outstanding policies already containing" certain provisions. It is clear that the legislature included the provision regarding "outstanding policies" to extend the application of the article to policies outstanding on the effective date of the article. The provision, having accomplished its purpose on the date the article became effective, is executed law. Therefore, the revised law omits the provision as unnecessary. The omitted law reads:

Sec. 1. . . . The provisions of this Section 1 of this Article 14.20 shall apply to all outstanding policies already containing such limitations.

Revised Law

Sec. 887.256. FORM APPROVAL. (a) The commissioner shall approve the form and language of an insurance certificate before the certificate is used by an association. The commissioner shall, in cooperation with the several associations, ensure that the certificate forms are as uniform as feasible. Forms for all associations are not required to be uniform.

(b) An insurance certificate form used by an association after May 12, 1939, must comply with this chapter and with any other laws regulating the association. (V.T.I.C. Art. 14.18 (part).)

Source Law

Art. 14.18. . . .

Every certificate issued must be approved by the Board as to form and language before it is used by an association. It is not mandatory that these forms be uniform for all associations, but the Board is directed to bring about as great uniformity as is feasible as early as practicable by cooperation with the several associations. All certificate forms hereafter used must be in accord with the provisions of this chapter and with all other laws regulating such associations as are embraced in this chapter.

Revisor's Note

V.T.I.C. Article 14.18 provides that certificate forms "hereafter used" must comply with that article and other laws regulating associations. The quoted language can only be read as meaning "certificate forms used after the effective date of this Act." The revised law substitutes "after May

12, 1939," for "hereafter" for the reason stated in Revisor's Note (2) to Section 887.054. Article 14.18 was enacted by the same act that enacted Article 14.08, and the discussion in the revisor's note relating to Article 14.08 applies equally to Article 14.18.

[Sections 887.257-887.300 reserved for expansion]

SUBCHAPTER G. ASSESSMENTS AND REVENUE

Revised Law

Sec. 887.301. ASSESSMENTS REQUIRED. (a) An association shall levy regular and periodic assessments on its membership in amounts and at intervals necessary to:

(1) meet the reasonable operating expenses of the association; and

(2) allow the association to pay in full any claims arising under its insurance certificates.

(b) An association may also levy an assessment for surplus funds.

(c) An association shall specify the purpose of an assessment.

(d) An assessment on a life insurance certificate issued after May 21, 1965, insuring the life of one or more individuals must be:

(1) in accordance with the reserve standard adopted by the association and approved by the commissioner, except that an association may use the 1956 Chamberlain Reserve Table with interest not to exceed 3-1/2 percent a year; and

(2) in an amount sufficient to deposit in the mortuary fund an amount at least equal to the renewal net premiums computed in accordance with the reserve standard adopted by the association and approved by the commissioner. (V.T.I.C. Art. 14.23, Sec. 1; Art. 14.24 (part).)

Source Law

Art. 14.23

Sec. 1. (a) Each company or association shall levy regular and periodical assessments by whatever name they may be called. These assessments must be in such amounts and at such proper intervals as will meet the reasonable operating expenses of the company or association and pay in full the claims arising under its certificates.

(b) All premiums or assessments upon policies hereafter issued insuring the life of one or more persons shall be in accordance with the reserve table standards adopted by the company or association and approved by the State Board of Insurance, except that any company or association is hereby authorized to use the 1956 Chamberlain Reserve Table with interest not to exceed 3 1/2% per annum, and shall be in an amount so as to deposit in the mortuary or claim fund an amount at least equal to the renewal net premiums calculated in accordance with the reserve standard adopted by such company or association and approved by the State Board of Insurance.

Art. 14.24. . . . Assessments shall be made upon the membership to meet benefit claims and for surplus funds and for expenses. Calls for assessments must specify the purpose for which made. . . .

Revisor's Note

(1) Section 1, V.T.I.C. Article 14.23, refers to "assessments by whatever name they may be called" and to "premiums or assessments." The revised law substitutes "assessments" for those and similar references throughout this chapter because Section 887.001(1) of the revised law defines "assessment" to include "premium."

(2) Section 1(b), V.T.I.C. Article 14.23, refers to assessments on "policies hereafter issued." The quoted language can only be read as meaning "policies issued after the effective date of this Act." That provision was added to Article 14.23 by amendments to that article made by Chapter 234, Acts of the 59th Legislature, Regular Session, 1965. That act took effect May 21, 1965. The revised law substitutes "after May 21, 1965," for "hereafter."

Revised Law

Sec. 887.302. AUTHORITY TO INCREASE ASSESSMENT RATES ON CERTAIN INSURANCE CERTIFICATES. (a) An association's board of directors may by resolution increase assessment rates on life insurance certificates in force up to the rate on an attained age basis in accordance with the 1956 Chamberlain Reserve Table, with interest at 3-1/2 percent a year, or any other reasonable, equitable, or necessary increase. The board may also adjust assessment rates on accident, health, and hospitalization insurance certificates in force.

(b) An assessment rate increase or adjustment under this section on insurance certificates in force applies to all classes of the same or similar certificates. (V.T.I.C. Art. 14.23, Sec. 4.)

Source Law

Sec. 4. The Board of Directors of each company or association by resolution may increase rates on life policies in force up to the rate on an attained age basis in accordance with the 1956 Chamberlain Reserve Table, with interest at 3 1/2% per annum, or any other reasonable, equitable or necessary increase, and may likewise adjust rates on health, accident, sickness and hospitalization policies in force. Any increase rate or rate adjustment on policies in force shall apply to all classes of the same or similar policies.

Revisor's Note

Section 4, V.T.I.C. Article 14.23, refers to "health, accident, sickness and hospitalization" insurance policies. The revised law substitutes "accident, health, and hospitalization insurance" for the quoted language because the terms are substantively identical and "accident, health, and hospitalization insurance" is more commonly used in this revision.

Revised Law

Sec. 887.303. APPROVAL REQUIRED FOR CERTAIN RATE INCREASES. An association may not implement a rate increase on insurance certificates in force before the commissioner approves the rate increase as complying with this chapter. (V.T.I.C. Art. 14.15, Sec. 9; Art. 14.23, Sec. 5.)

Source Law

[Art. 14.15]

Sec. 9. Whenever rates shall be increased subsequent to date of issue of a policy, such increase shall not be placed in effect until first approved by the State Board of Insurance as provided in Article 14.23 of this Chapter 14.

[Art. 14.23]

Sec. 5. Any increase in rates on

policies in force shall not be placed in effect without the advance approval of the State Board of Insurance approving the same as being in compliance with the provisions of this Chapter.

Revised Law

Sec. 887.304. LIMIT ON RATE INCREASES. Notwithstanding any other provision of this chapter, on a life insurance certificate issued after May 21, 1965, an association may not during any consecutive five-year period increase the rate to more than double the rate charged the insured at the time of the rate increase. (V.T.I.C. Art. 14.25, Sec. 7.)

Source Law

Sec. 7. Any other provision of this Chapter 14 of this Insurance Code, as amended, notwithstanding, rates on life policies issued after the effective date of this Act may not be increased during any consecutive five-year period more than double the rate than charged such insured at the time of such rate increase.

Revisor's Note

Section 7, V.T.I.C. Article 14.25, applies to life insurance policies "issued after the effective date of this Act." Section 7 was added to Article 14.25 by Chapter 234, Acts of the 59th Legislature, Regular Session, 1965; that act took effect May 21, 1965. The revised law substitutes that date for "the effective date of this Act."

Revised Law

Sec. 887.305. EXPENSE LOADING ON CERTAIN INSURANCE CERTIFICATES. If an association increases a life insurance assessment rate at any age other than at age of issue, the expense loading on the new assessments may not, on 50 years of age or greater, exceed 25 percent of the gross assessment charged, unless an additional expense loading is approved by the commissioner as reasonable and necessary. (V.T.I.C. Art. 14.25, Sec. 1 (part).)

Source Law

Sec. 1. . . .

(a) . . . Whenever any life premium rate is increased in accordance with the provisions of this Chapter at any age other than at age of issue, the expense loading on the new premiums shall not, upon all ages fifty and above, exceed twenty-five per cent (25%) of such gross premium charged, unless an additional expense loading is approved by the State Board of Insurance as being reasonable and necessary.

. . .

Revised Law

Sec. 887.306. ASSESSMENT-AS-NEEDED ASSOCIATIONS: PAYMENTS ON CERTAIN INSURANCE CERTIFICATES. (a) This section applies only to an association operating on an assessment-as-needed basis.

(b) If the members' payments on insurance certificates issued and in force before May 12, 1939, or on the reinsurance or renewals of those certificates, are not sufficient to pay matured death and disability claims in the maximum amount stated in the certificates and to provide for the creation and maintenance of the funds required by the association's bylaws, the association may, with the commissioner's approval and after proper hearing before the commissioner, provide for meeting the deficiency by additional, increased, or extra rates of payment.

(c) The association may give the members the option of agreeing to reduced maximum benefits or making increased payments. (V.T.I.C. Art. 14.32.)

Source Law

Art. 14.32. If the payments of the members of any association coming within the scope of this chapter on certificates issued and in force when this code takes effect, or the reinsurance or renewals of such certificates, shall prove insufficient to pay matured death and disability claims in the maximum amount stated in such policies or certificates, and to provide for the creation and maintenance of the funds required by its by-laws, such association may with the approval of the Board of Insurance Commissioners and after proper hearing before said Board provide for meeting such deficiency by additional, increased, or extra rates of payment. The members may be given the option of agreeing to reduced maximum benefits, or of making increased payments.

Revisor's Note

(1) V.T.I.C. Article 14.32 provides that, if the payments by the members of an association are not sufficient to pay claims and to provide for the creation and maintenance of funds required by the association's bylaws, the association may provide for meeting the deficiency by additional, increased, or extra rates of payment. Except as to assessment-as-needed associations, that provision was impliedly repealed. Article 14.32 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951. Article 14.15, as amended by Chapter 234, Acts of the 59th Legislature, Regular Session, 1965, requires an association to maintain certain reserves for the payment of claims; Section 7 of that article provides that if an association does not have the required reserves, the association shall increase rates on insurance certificates to correct the deficiency. Section 2, Article 14.15, provides that the reserve requirements do not apply to assessment-as-needed associations. The later amendment of Article 14.15 impliedly repealed the requirements of Article 14.32 as applied to associations other than assessment-as-needed associations. For clarity, the revised law provides that it applies only to assessment-as-needed associations.

(2) V.T.I.C. Article 14.32 provides that it applies to insurance certificates "issued and in force when this code takes effect." The revised law substitutes "May 12, 1939," for "when this code takes effect" for the reason stated in Revisor's Note (2) to Section 887.054. Article 14.32 was enacted by the same act that enacted Article 14.08, and the discussion in the revisor's note relating to Article 14.08 applies equally to Article 14.32.

Revised Law

Sec. 887.307. REVENUE OF ASSOCIATION; DEPOSIT. (a) The revenue of an association must be derived from:

(1) membership fees; and

(2) assessments.

(b) Not later than the fifth day after the date an association collects revenue, the association shall deposit the revenue in a state or national bank. (V.T.I.C. Art. 14.24 (part).)

Source Law

Art. 14.24. The funds of the association shall be derived from membership fees and assessments. . . . All funds collected that belong to the association shall be deposited within five (5) days in a state or national bank.

Revised Law

Sec. 887.308. SUSPENSION OF MEMBER FOR NONPAYMENT. Before suspending a member from membership for nonpayment of assessments or membership fees, an association shall send notice to the member by first class mail stating the final date of payment. (V.T.I.C. Art. 14.24 (part).)

Source Law

Art. 14.24. . . . Before suspending any member from membership it shall be necessary for the association to mail a notice, by first-class mail, to the member, which notice shall state the final date of payment. . . .

Revisor's Note

V.T.I.C. Article 14.24 requires an association to send a member a notice stating "the final date of payment" before suspending the member from membership. The portion of Article 14.24 that precedes this requirement provides that an association's revenues are derived from membership fees and assessments. (That portion is revised as Section 887.307.) Thus, in context, the "final date of payment" revised in this section may only be read as referring to payment of an assessment or membership fee. The revised law clarifies that it applies to suspension of a member for nonpayment of assessments or membership fees.

Revised Law

Sec. 887.309. FAILURE TO COMPLY WITH CERTAIN COMMISSIONER ORDERS. If an association refuses to comply with an order of the commissioner regarding rates or assessments under this chapter, the commissioner shall treat the association as insolvent. (V.T.I.C. Art. 14.23, Sec. 3.)

Source Law

Sec. 3. When any company or association shall refuse to comply with the order of the State Board of Insurance respecting rates or assessments as in this Chapter authorized, it shall be treated as insolvent.

[Sections 887.310-887.350 reserved for expansion]

SUBCHAPTER H. MORTUARY AND EXPENSE FUNDS

Revised Law

Sec. 887.351. MORTUARY AND EXPENSE FUNDS. An association's bylaws must provide for the method and procedure for allocating assessments between the association's mortuary and expense funds. (V.T.I.C. Art. 14.25, Sec. 3.)

Source Law

Sec. 3. Each company or association shall provide in its bylaws for the method and procedure for the allocation of premiums to be made between the mortuary and expense funds.

Revised Law

Sec. 887.352. LIMITS ON USE OF FUNDS. An association may spend or invest money from a mortuary fund or expense fund only as provided for each fund by this subchapter. (V.T.I.C. Art. 14.25, Sec. 5.)

Source Law

Sec. 5. Each company or association mortuary fund and expense fund shall be expended only in the manner as is provided for each fund in Subparagraph (a) of Section 1 of Article 14.25 of this Chapter of this Insurance Code and invested only as provided in Section 4 of Article 14.25 of this Chapter of this Insurance Code.

Revised Law

Sec. 887.353. DIVISION OF FUNDS: CERTAIN LIFE INSURANCE CERTIFICATES. (a) This section applies to a life insurance certificate insuring the life of one or more individuals issued:

(1) after December 31, 1965; or

(2) before December 31, 1965, and on which the assessment rate has been increased based on an age other than age on the date the certificate was issued.

(b) To the extent consistent with this subchapter, an association shall divide collected assessments into at least two funds.

(c) An association shall deposit in a mortuary fund a portion of the association's assessments at least equal to the renewal net premium computed at the age of issue or some other advanced age in accordance with the reserve standard adopted by the association. The association may pay from the mortuary fund only:

(1) fund claims under insurance certificates;

(2) dividends to certificate holders as provided by Section 887.064; and

(3) any other expenditures permitted by law.

(d) An association shall deposit in an expense fund the remaining portion of the assessments not deposited under Subsection (c). The association may pay expenses from the expense fund.

(e) This section does not apply to an association operating on an assessment-as-needed basis. (V.T.I.C. Art. 14.25, Sec. 1 (part).)

Source Law

Art. 14.25

Sec. 1. The provisions of this Section 1 shall apply to all companies or associations regulated by the provisions of this Chapter, except companies or associations operating upon an assessment-as-needed basis.

(a) Assessments or premiums upon (i) policies issued after December 31, 1965, insuring the life of one or more persons, and (ii) policies insuring the life of one or more persons issued prior to December 31, 1965, and upon which the rate has been increased based upon an age other than age at date of issue, when collected shall be divided into at least two funds. One of these shall be the mortuary or relief fund, by whatever name it may be called in the different companies or associations, and from which fund claims under certificates shall be paid, and nothing else, except: (1) dividends to policyholders when paid in accordance with this Chapter, . . . (3) other expenditures permitted by law; and the other fund shall be the expense fund from which expenses may be paid. As applies to all such policies, as defined in (i) and (ii) of this subparagraph and insuring the life of one or more persons, an amount at least equal to the renewal net premium, calculated at the age of issue or some other advanced age in accordance with the reserve standard adopted by such company or association, shall be placed in the mortuary fund. All other portions of the premiums may be placed in the expense fund. . . .

Revisor's Note

Section 1, V.T.I.C. Article 14.25, refers to a "mortuary or relief fund, by whatever name it may be called in the different companies or associations." Other provisions in V.T.I.C. Chapter 14 refer to a "mortuary or claim fund." Throughout this chapter, the revised law substitutes "mortuary fund" for the quoted language because "mortuary fund" is the defined term under Section 887.001 of the revised law.

Revised Law

Sec. 887.354. DIVISION OF FUNDS: ACCIDENT AND HEALTH INSURANCE CERTIFICATES AND CERTAIN LIFE INSURANCE CERTIFICATES. (a) This section applies to:

(1) a life insurance certificate in force on December 31, 1965, to which Section 887.353 does not apply; and

(2) an accident, health, or hospitalization insurance certificate.

(b) An association shall deposit in a mortuary fund an amount equal to at least 60 percent of the association's assessments, not including membership fees.

(c) An association shall deposit in an expense fund:

(1) membership fees; and

(2) the remaining portion of the assessments not deposited under Subsection (b).

(d) This section does not apply to an association operating on an assessment-as-needed basis. (V.T.I.C. Art. 14.25, Sec. 1 (part).)

Source Law

Sec. 1. The provisions of this Section 1 shall apply to all companies or associations regulated by the provisions of this Chapter, except companies or associations operating upon an assessment-as-needed basis.

. . .

(b) Premiums or assessments upon all policies in force on December 31, 1965, except as in Subparagraph (a) of this Section 1 provided, and upon all health, accident, sickness and hospitalization policies shall be divided so that at least sixty per cent (60%) of such premium, exclusive of the membership fee, shall be placed in the mortuary fund of the company or association. The membership fee and the remaining portion of the premium may be placed in the expense fund. . . .

Revised Law

Sec. 887.355. DIVISION OF FUNDS: CERTAIN LIFE INSURANCE CERTIFICATES WITH NO RATE INCREASE. (a) This section applies to a life insurance certificate in force on December 31, 1965, on which the assessment rate has not been increased.

(b) An association may:

(1) deposit in a mortuary fund at least the net renewal premium, based on the reserve table adopted by the association; and

(2) deposit in an expense fund the remaining portion of the premium.

(c) This section does not apply to an association operating on an assessment-as-needed basis. (V.T.I.C. Art. 14.25, Sec. 1 (part).)

Source Law

Sec. 1. The provisions of this Section 1 shall apply to all companies or associations regulated by the provisions of this Chapter, except companies or associations operating upon an assessment-as-needed basis.

. . .

(b) . . . As to policies in force on December 31, 1965, insuring the life of one or more persons and upon which a rate increase has not been accomplished, any company or association may at its election divide the premiums on such life policies so as to place at least the net renewal premium, based upon the reserve table adopted by it, in its mortuary fund and place the remaining portion of said premium in its expense fund.

Revised Law

Sec. 887.356. DIVISION OF FUNDS: ASSESSMENT-AS-NEEDED ASSOCIATIONS. (a) An association operating on an assessment-as-needed basis shall divide collected assessments into at least:

(1) a mortuary fund; and

(2) an expense fund.

(b) An association under this section shall deposit into a mortuary fund an amount equal to at least 60 percent of the association's assessments, not including membership fees. (V.T.I.C. Art. 14.25, Sec. 2.)

Source Law

Sec. 2. The provision of this Section 2 shall apply to all companies or associations operating upon an assessment-as-needed basis.

(a) Assessments when collected shall be divided into at least two funds. One of these shall be the mortuary or relief fund, by whatever name it may be called in the different associations; and the other fund shall be the expense fund. At least sixty per cent (60%) of assessments collected except the membership fee, must be placed in the mortuary or relief fund.

Revised Law

Sec. 887.357. INVESTMENT OF FUNDS. (a) An association may invest money from a mortuary fund only in securities and investments that are a legal investment for the reserve funds of a domestic life, accident, and health insurance company operating under Chapter 841.

(b) An association may invest money from an expense fund only in securities and investments that are a legal investment for the surplus funds of a domestic life, accident, and health insurance company operating under Chapter 841.

(c) An association may invest surplus funds belonging to the association only in securities that are a legal investment for the surplus funds of a domestic life, accident, and health insurance company operating under Chapter 841. (V.T.I.C. Art. 14.25, Sec. 4; Art. 14.26.)

Source Law

[Art. 14.25]

Sec. 4. The mortuary fund may be invested only in such securities and investments as are a legal investment for the reserve funds of a domestic life, health and accident insurance company regulated by the provisions of Chapter 3 of this Insurance Code, as amended, and the expense fund may be invested in any securities and investments as are legal investments for the surplus funds of a domestic life, health and accident insurance company regulated by the provisions of Chapter 3 of this Insurance Code, as amended.

Art. 14.26. Any surplus funds on hand belonging to any such association must be invested, if at all, in such securities as the funds of stock life, health and accident insurance companies may be invested in.

Revisor's Note

(1) Section 4, V.T.I.C. Article 14.25, refers to "Chapter 3 of this Insurance Code." The relevant portions of Chapter 3 relating to the organization of domestic life, health, and accident insurance companies are revised in Chapter 841. The revised law is drafted accordingly.

(2) V.T.I.C. Article 14.26 refers to "stock life, health and accident insurance companies." Those companies are organized under the portions of V.T.I.C. Chapter 3 revised in Chapter 841. For consistency, the revised law refers to a domestic life, accident, and health insurance company organized under Chapter 841.

Revised Law

Sec. 887.358. PAYMENT OF TAXES ON MORTUARY FUND INCOME. An association may pay from a mortuary fund any taxes that are assessed against income on the fund and required to be paid by the association. (V.T.I.C. Art. 14.25, Sec. 1 (part); Art. 14.53.)

Source Law

[Art. 14.25]

Sec. 1. . . .

(a) . . . [One of these shall be the mortuary or relief fund, by whatever name it may be called in the different companies or associations, and] from which fund [claims under certificates shall be paid, and nothing else,] except: . . . (2) income taxes, if any, which may be due by reason of the income to or operation of said fund, and . . . .

Art. 14.53. Any company or association

operating under the provisions of this chapter, may pay from the mortuary or relief funds by whatever name it may be called any taxes that may be assessed against or required to be paid by the company or association because of income to such funds.

Revised Law

Sec. 887.359. PAYMENT OF REINSURANCE PREMIUM. An association may pay from a mortuary fund the premiums for any reinsurance under Section 887.210. (V.T.I.C. Art. 14.62 (part).)

Source Law

Art. 14.62. Companies and associations . . . may . . . pay the premiums for such reinsurance out of the mortuary or claim funds. . . .

Revised Law

Sec. 887.360. COST OF DEFENDING CONTESTED CLAIMS. An association authorized to write accident, health, or hospitalization insurance may pay the reasonable costs of defending a contested claim on an accident, health, or hospitalization insurance certificate from the mortuary fund of the association if:

(1) the expenditure is approved by the commissioner; and

(2) the association has the reserves required by Subchapter I. (V.T.I.C. Art. 14.25, Sec. 6.)

Source Law

Sec. 6. The reasonable costs of defending contested claims on health, accident, sickness or hospitalization policies only may be paid from the mortuary or claim fund of any company or association authorized to write health, accident, sickness or hospitalization insurance, provided: (a) each such expenditure for that purpose is approved by the State Board of Insurance, and (b) such company or association possess the required reserves as provided in this Chapter 14 but less any permissive deficiency reserve.

Revisor's Note

Section 6, V.T.I.C. Article 14.25, provides that an association may pay the costs of defending contested claims from its mortuary or claim fund if the association possesses the required reserves "less any permissive deficiency reserve." Throughout this chapter, the revised law omits references to a permissive deficiency reserve because the provisions of Article 14.15 relating to permissive deficiency reserves have been omitted as executed. See the revisor's note at the end of Subchapter I.

[Sections 887.361-887.400 reserved for expansion]

SUBCHAPTER I. RESERVES

Revised Law

Sec. 887.401. RESERVES ON INDIVIDUAL LIFE INSURANCE CERTIFICATES. (a) An association shall reserve an individual life insurance certificate insuring one or more persons at individual premiums for each person as provided by this section.

(b) An association shall maintain reserves on each of its individual life insurance certificates in accordance with the reserve standard adopted by the association and approved by the commissioner. The standard must provide reserves that in the aggregate are at least equal to the reserve amounts computed using the 1956 Chamberlain Reserve Table with interest not to exceed 3-1/2 percent a year. An association may use the 1956 Chamberlain Reserve Table with interest not to exceed 3-1/2 percent a year. (V.T.I.C. Art. 14.15, Sec. 2 (part).)

Source Law

Sec. 2. . . .

(a)(1) Each individual life policy insuring one or more persons at individual premiums for each such person shall be reserved and each company or association regulated by the provisions of this Chapter shall maintain reserves on such individual life policies in accordance with any reserve standards adopted by such company or association and approved by the State Board of Insurance, provided such reserves are at least equal in the aggregate to reserves based on the 1956 Chamberlain Reserve Table with interest not to exceed three and one half per cent (3 1/2%) per annum. Any company or association is hereby authorized to use the 1956 Chamberlain Reserve Table with interest not to exceed three and one half per cent (3 1/2%) per annum.

. . .

Revised Law

Sec. 887.402. RESERVES ON FAMILY GROUP LIFE INSURANCE CERTIFICATES. (a) An association shall reserve a family group life insurance certificate on which the association charges a group premium that is not reduced on the death of an insured as provided by this section.

(b) An association shall maintain reserves on each of its family group life insurance certificates using one of the following methods:

(1) the reserves must be equal to the reserves that would be required under Section 887.401 on individual life insurance certificates on the lives of the two oldest living members of the family group, with the amount of insurance for those two members determined assuming that the elder of the two will die first;

(2) the reserves must be equal to the reserves required under Section 887.401 on individual life insurance certificates on the lives of the living members of the family group, with the amount of insurance for each member of the family group determined assuming that each member will die first; or

(3) any other table or method of computing reserves approved in advance by the commissioner.

(c) An association may select the method to be used to compute the reserves under Subsection (b). (V.T.I.C. Art. 14.15, Sec. 2 (part).)

Source Law

Sec. 2. . . .

(a) . . .

(2) Family group life policies upon which a group premium is charged, and which premium is not reduced upon the death of any insured, shall be reserved and each company or association shall maintain reserves on such family group policies in any one of the following methods of calculation as may be selected by such company or association:

(i) The reserves shall be equal to the reserves which would be required in accordance with the provisions of this Article on individual life policies on the lives of the then living two oldest members of each such family group; the amount of insurance for such two members shall be based on the assumption that the elder of such two members will be the first to die; or

(ii) The reserves shall be equal to the reserves which would be required, in accordance with the provisions of this Article, on individual life policies, on the lives of the then living members of such family group; the amount of insurance for each such member of the family group shall be based on the assumption that each such member will be the first to die; or

(iii) Any table or any method of calculating reserves as shall be approved in advance by the State Board of Insurance.

. . .

Revised Law

Sec. 887.403. ISSUE YEAR AND ISSUE AGE IN CERTAIN INSURANCE CERTIFICATES. (a) In this section, "gross premium" means the renewal net premium plus any expense loading designated by the association or as otherwise regulated by this chapter.

(b) For an individual or family group life insurance certificate in force on December 31, 1965, or an individual or family group life insurance certificate with a rate increase effective after December 31, 1965, the reserves may be computed as if:

(1) the issue year is the last calendar year that the gross premium computed using the reserve table and interest rate adopted by the association at the insured's age in that calendar year is equal to or less than the premium rate charged by the association on the reserved certificate; and

(2) the issue age is the insured's age in the calendar year under Subdivision (1). (V.T.I.C. Art. 14.15, Sec. 2 (part).)

Source Law

Sec. 2. . . .

(a) . . .

(3) As is applicable to all life policies (individual and family group) in force on December 31, 1965, or upon which a rate increase is effected after December 31, 1965, life reserves (individual and family group) may be determined as follows:

(i) the issue year shall be the last calendar year for which the gross premium on the reserve table and interest rate adopted by the company or association at the attained age in that calendar year is equal to or less than the premium rate charged by the company or association on such policy so reserved, and

(ii) the issue age shall be the attained age in the calendar year just defined.

Gross premium as herein used shall mean the renewal net premium plus such expense loading as shall be designated by the company or association or as shall otherwise be regulated by the provisions of this Chapter 14.

. . .

Revised Law

Sec. 887.404. RESERVES ON ACCIDENT, HEALTH, AND HOSPITALIZATION INSURANCE CERTIFICATES. An association shall maintain reserves on each of its accident, health, and hospitalization insurance certificates in the manner required of a company authorized to issue that type of coverage under Chapter 841. (V.T.I.C. Art. 14.15, Sec. 2 (part).)

Source Law

Sec. 2. . . .

(b) All health, accident, hospitalization and sickness insurance shall be reserved by the company or association and such company or association shall maintain reserves on such insurance in the same manner as is required by a company writing such coverage under the provisions of Chapter 22 of this Insurance Code, as amended.

Revisor's Note

Section 2, V.T.I.C. Article 14.15, requires an association to maintain reserves on health, accident, hospitalization, and sickness insurance policies "in the same manner as is required by a company writing such coverage under the provisions of Chapter 22 of this Insurance Code, as amended." Section 2, V.T.I.C. Article 22.11, revised in part as Section 884.452, provides that a company must maintain reserves on health, accident, and sickness policies "in the same manner as is required by the companies writing such coverage under the provisions of Chapter 3 of the Insurance Code of Texas."

The provisions of Chapter 3 relating to domestic accident and health insurance companies that are subject to the appropriate reserve requirements are revised in Chapter 841. For the reader's convenience, the revised law substitutes a reference to Chapter 841, the revision of Chapter 3, for the reference to Chapter 22.

Revised Law

Sec. 887.405. COMPUTATION OF RESERVE LIABILITY. (a) Each year, an association shall compute its reserve liability on all outstanding insurance certificates.

(b) To make the computation, an association:

(1) shall use the net premium basis in accordance with the reserve table and interest rate adopted by the association and approved by the commissioner; and

(2) may use group methods and approximate averages for fractions of a year.

(c) The reserve liability may be computed on not more than a one-year preliminary term.

(d) As soon as practical each year, the commissioner shall compute or cause to be computed the reserve liability of each association. To make the computation, the commissioner may use group methods and approximate averages for fractions of a year. (V.T.I.C. Art. 14.15, Secs. 2 (part), 3.)

Source Law

Sec. 2. In the manner as in this Article is hereinafter provided, each company or association regulated by the provisions of this Chapter, . . . shall in each year, commencing as of December 31, 1965, compute or cause to be computed its reserve liability on all outstanding and in force policies of insurance. In making such computation each company or association is authorized to use group methods and approximate averages for fractions of a year or otherwise. Such reserve liability shall be computed upon the net premium basis in accordance with the reserve table and interest rate adopted by such company or association and approved by the State Board of Insurance and such reserve liability may be calculated on not more than a one year preliminary term basis with allowance for the permissive deficiency reserve provided for in this Chapter 14. Such reserves shall be calculated and determined as follows:

. . .

Sec. 3. The State Board of Insurance, as soon as practical, in each year, shall compute or cause to be computed the reserve liability of each company or association regulated by the provisions of this Chapter 14. In making such computation the said Board may use group methods and approximate averages for fractions of a year or otherwise.

Revisor's Note

(1) Section 2, V.T.I.C. Article 14.15, requires an association to compute its reserve liability, "commencing as of December 31, 1965." The revised law omits the reference to a commencement date as executed.

(2) Section 2, V.T.I.C. Article 14.15, refers to "outstanding and in force policies of insurance." The reference to "in force" is omitted from the revised law because, in this context, "in force" is included within the meaning of "outstanding."

Revised Law

Sec. 887.406. INCREASE OF RESERVES. (a) If an association does not have in its mortuary fund the reserves required by this subchapter, the association's board of directors by appropriate action shall increase assessment rates on insurance certificates in force by advancing the age of each insured from the age at the date the certificate is issued or from the age previously advanced or otherwise equitably or reasonably adjust assessment rates to correct the reserve inadequacy. The board shall take that action not later than the 30th day after the date the reserves are computed.

(b) An association may make an assessment rate adjustment under Subsection (a) at any time if it appears that a reserve inadequacy will exist as of December 31 of the year in which the rate adjustment is made.

(c) The commissioner shall order an association to comply with this chapter.

(d) If the board of directors does not comply with Subsection (a), the commissioner shall treat the association as insolvent. (V.T.I.C. Art. 14.15, Sec. 7; Art. 14.23, Sec. 2.)

Source Law

[Art. 14.15]

Sec. 7. In the event any company or

association at any future time does not possess in its mortuary fund the required reserves, less any permissive deficiency reserve, the Board of Directors of the company or association shall by appropriate action increase rates on policies in force by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment so as to correct such reserve inadequacy. Such rate adjustment may be made at any time, and from time to time, provided it shall be apparent that such reserve inadequacy will exist as of December 31st of the year in which such rate adjustment is made, and any such rate adjustment or readjustment so made shall be deemed and considered as an assessment upon said policies. In the event of the failure of the Board of Directors of the company or association to so act in adjusting rates within thirty (30) days following the calculation of reserves as of the dates in this Chapter provided, the company or association shall be dealt with in accordance with this Chapter as if it were insolvent.

[Art. 14.23]

Sec. 2. When, or if, in the course of operation the amount of the mortuary fund of the company or association is not equal to or in excess of the required reserves under the reserve standard adopted by the company or association and approved by the State Board of Insurance on such policies, but less any permissive deficiency reserve, the amount of the premiums shall be increased in the manner as prescribed in this Chapter 14 until such rates are adequate to eliminate the inadequacy of the required reserve, less any permissive deficiency reserve, and the State Board of Insurance shall so order.

Revised Law

Sec. 887.407. NONAPPLICABILITY TO ASSESSMENT-AS-NEEDED ASSOCIATIONS. This subchapter does not apply to an association operating on an assessment-as-needed basis. (V.T.I.C. Art. 14.15, Sec. 2 (part).)

Source Law

Sec. 2. [In the manner as in this Article is hereinafter provided, each company or association regulated by the provisions of this Chapter,] except assessment-as-needed associations or companies, [shall in each year, commencing as of December 31, 1965, compute or cause to be computed its reserve liability on all outstanding and in force policies of insurance.] . . .

Revisor's Note
(End of Subchapter)

Sections 4, 5, and 6, V.T.I.C. Article 14.15, prescribe procedures related to a permissive deficiency reserve and require an association to begin complying with those sections not later than July 1, 1966, and to completely reduce any permissive deficiency reserve not later than December 31, 1983. An association that does not reduce its reserve as required by those sections is treated as insolvent. The revised law omits those provisions as obsolete. The omitted law reads:

Sec. 4. (a) As of December 31, 1965, each such company or association regulated by the provisions of this Chapter shall so calculate the amount of the required reserves as afore provided in this Article, and shall also determine the amount of the net assets (net assets being the gross amount of such mortuary fund assets at such date, but less any liabilities of said fund, exclusive of reserves) of its mortuary or claim fund, or by whatever name said fund may be designated. In the event the net assets of the mortuary fund are insufficient to equal the amount of the required reserves as in this Article provided, the difference shall be designated and carried as a permissive deficiency reserve.

(b) In the event any company or association shall, as of December 31, 1965, possess a permissive deficiency reserve, it shall not later than July 1, 1966: (1) file an application with the State Board of Insurance seeking approval of a rate increase whereby such rate increase shall be accomplished by charging a premium based upon the advancement of ages of such insureds, from age at issue date, or such ages so previously advanced, in order to totally eliminate such permissive deficiency reserve or to partially eliminate such permissive deficiency reserve in connection with a plan to cure such permissive deficiency reserve; or (2) file an application with the State Board of Insurance for approval of a plan whereby such permissive deficiency reserve will be eliminated over a period of time not to exceed eighteen (18) years. Such plan shall reasonably demonstrate the anticipated ability of the company or association to correct such permissive deficiency reserve during such period of time. Such plan may include any reasonable method, procedure or financial arrangement in order to accomplish the required reduction of the permissive deficiency reserve over such period of eighteen (18) years. Provided said plan is found to reasonably demonstrate the ability of the company or association during such period of time to eliminate such permissive deficiency reserve, then such permissive deficiency reserve shall be allowed without creating the insolvency of the company or association, but the company or association shall reduce said permissive deficiency reserve so determined by at least 1/18th thereof during each calendar year thereafter, commencing as of December 31, 1966, so that as of December 31, 1983, the permissive deficiency reserve will be fully paid and satisfied, provided, however, that such required reduction in the permissive deficiency reserve shall never exceed the cumulative aggregate amount of 1/18th per annum.

In the event that such plan be not finally approved, such company or association shall increase rates as provided in Section 4, Paragraph (b)(1) of this Article.

(c) Each company or association may, in addition to, or in combination with, or in lieu of, such rate adjustment or readjustments of rates as in this Chapter provided, offer each insured a proportionate reduction in the amount of insurance, or some lesser reduction, provided such plan is agreed to by the individual insured or the controller of said policy.

(d) Any decision made by the State Board of Insurance as to approval or disapproval of the plan for curing such permissive deficiency reserve shall be subject to judicial review in accordance with Article 21.44 of Sub-Chapter F of Chapter 21 of this Insurance Code.

Sec. 5. (a) Any company or association using an approved plan to cure its permissive deficiency reserve, but possessing as of December 31, 1965, a permissive deficiency reserve equal to or in excess of 50% of its required reserve so determined to exist as of such date, shall, by July 1, 1966, furnish to the State Board of Insurance an affidavit executed by its President, Vice President or Secretary, certifying that at least the renewal net premium based upon: (1) the table of rates and reserves adopted by the company or association; and (2) the age of each insured at date from which reserves are calculated, is being deposited to the company's or association's mortuary or claim fund upon each in force life policy or life policy in combination with other type benefits. In the event such company or association cannot so furnish such affidavit, said company or association shall: (1) forthwith alter the division of premiums between the mortuary and expense funds so that such renewal net premium so calculated at age from which reserves are calculated on each such policy is placed in the company's or association's mortuary fund; or (2) forthwith apply to the State Board of Insurance for approval of a rate increase whereby the rate charged on each such policy will thereafter contribute to the mortuary fund at least the renewal net premium so determined under such table at age from which reserves are calculated.

(b) Any company or association using an approved plan to cure its permissive deficiency reserve, but possessing as of December 31, 1965, a permissive deficiency reserve of less than 50% of its required reserve so determined to exist as of such date, shall, by July 1, 1966, furnish to the State Board of Insurance an affidavit executed by its President, Vice President or Secretary, certifying that in the aggregate premiums deposited to the mortuary or claim fund equal or exceed at least the aggregate amount of the renewal net premiums on all policies in force on December 31, 1965, based upon (1) the table of rates and reserves adopted by the company or association, and (2) the age of each insured at date from which reserves are calculated. In the event such company or association cannot so furnish such affidavit, said company or association shall: (1) forthwith: (i) alter the division of premiums between the mortuary and expense funds so that such renewal net premium in the aggregate on all policies in force on December 31, 1965, so calculated at age from which reserves are determined on each policy in force is placed in the company's or association's mortuary fund, and (ii) provide in its bylaws that annually thereafter in each calendar year an amount, from the premiums collected, in the aggregate equal to the renewal net premium on all policies in force on December 31st of each such year will be deposited to the company's or association's mortuary fund; or (2) forthwith apply to the State Board of Insurance for approval of a rate increase whereby the rate charged on each such policy will thereafter contribute to the mortuary fund at least the renewal net premium so determined under such table at age from which reserves are calculated.

Sec. 6. In the event any annual required reduction of the permissive deficiency reserve is not accomplished as of December 31st of each year involved, the Board of

Directors of the company or association shall by appropriate action increase rates by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment, so as to correct the failure to make the required reduction of the permissive deficiency reserve. In the event of the failure of the Board of Directors of the company or association to so act within thirty (30) days following such calculation of its reserves, the company or association shall be dealt with in accordance with this Chapter as if it were insolvent. In like manner if it shall be apparent at any time during any calendar year that the annual required reduction of the permissive deficiency reserve cannot be accomplished as of December 31st of each or any year, the Board of Directors of the company or association may by appropriate action increase rates by charging a premium based upon the advancement of ages of such insureds from age at issue date or such ages so previously advanced, or by any other equitable or reasonable rate adjustment so as to correct the failure to accomplish such annual required reduction of the permissive deficiency reserve on all or any part of the permissive deficiency reserve. Any such rate adjustment or readjustment shall be deemed and considered as assessments upon said policies.

[Sections 887.408-887.450 reserved for expansion]

SUBCHAPTER J. CONVERSION TO LEGAL RESERVE INSURANCE COMPANY

Revised Law

Sec. 887.451. AUTHORIZATION TO CONVERT OR REINSURE. Subject to the requirements of this subchapter, an association may convert or reinsure itself to a legal reserve insurance company operating under Chapter 882. (V.T.I.C. Art. 14.61, Sec. 1(a) (part).)

Source Law

Art. 14.61

Sec. 1. (a) Any domestic local mutual aid association; statewide life, or life, health and accident association; mutual assessment life, health and accident association; burial association; or any other similar concern, by whatsoever name or class designated, whether specifically named herein or not, organized and operating under the laws of the State of Texas, may convert or reinsure itself into a legal reserve insurance company operating under the provisions of Chapter 11 of this code, or

. . . .

Revisor's Note

(1) Section 1(a), V.T.I.C. Article 14.61, refers to a "domestic local mutual aid association; statewide life, or life, health and accident association; mutual assessment life, health and accident association; burial association; or any other similar concern, by whatsoever name or class designated, whether specifically named herein or not." The revised law substitutes "association" for the quoted language because "association" is the term defined by V.T.I.C. Article 14.02, which is revised in part as Section 887.001, and because V.T.I.C. Article 14.01, which is revised in part as Section 887.003, provides that this chapter applies to the listed entities.

(2) Section 1(a), V.T.I.C. Article 14.61, provides that an association may "be reinsured by any legal reserve insurance company operating under the provisions of Chapter 3 of this code by conforming to the provisions of this article." The revised law omits that provision as repealed by the enactment of Article 14.62, which is revised in part as Section 887.210. Article 14.61 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951, and was derived from Article 5068-3, Vernon's Texas Civil Statutes. Article 5068-3 was enacted by Chapter 353, Acts of the 48th Legislature, Regular Session, 1943. V.T.I.C. Article 14.62 was enacted by Chapter 144, Acts of the 52nd Legislature, Regular Session, 1951, as an amendment to Article 5068-1, and designated as part of the Insurance Code

pursuant to H.C.R. 179, Acts of the 52nd Legislature, Regular Session, 1951. Article 14.62 provides that an association may enter into a reinsurance agreement with legal reserve companies that meet certain criteria; it also provides that the reinsurance agreement must be approved by the Board of Insurance Commissioners. Section 2, Chapter 144, Acts of the 52nd Legislature, Regular Session, 1951, provides that "[a]ll laws or parts of laws in conflict herewith are hereby repealed." Thus, the later enactment of Article 14.62 repealed the provisions of Article 14.61 relating to reinsurance of an association by a legal reserve company. The omitted law reads:

Art. 14.61. . . . be reinsured by any legal reserve insurance company operating under the provisions of Chapter 3 of this code by conforming to the provisions of this article. . . .

Revised Law

Sec. 887.452. PROPOSAL FOR CONVERSION OR REINSURANCE. An association's board of directors may determine by majority vote to submit a proposed conversion or reinsurance under Section 887.451 to the members of the association. Before the proposed conversion or reinsurance may be submitted to the members, the board must prepare detailed plans for the conversion or reinsurance and submit the plans to the commissioner. (V.T.I.C. Art. 14.61, Sec. 1(a) (part).)

Source Law

(a) . . . When it shall be determined by a majority vote of the Board of Directors of any such association to submit the proposed change to the members of the association, said board of directors shall prepare in detail plans for making such change, and such plans shall be submitted to the Board of Insurance Commissioners. . . .

Revised Law

Sec. 887.453. MEMBERS MEETING; NOTICE. (a) On receipt of the commissioner's written approval of proposed plans under Section 887.452 or of the plans as amended to meet the commissioner's requirements in accordance with Chapter 882, an association's board of directors or an officer of the association authorized by its bylaws to call a meeting of its members shall:

(1) call a meeting of the association's members for voting on ratification of the proposed conversion or reinsurance; and

(2) mail to each member of the association:

(A) a copy of the proposed plans; and

(B) a notice of the meeting.

(b) The meeting may not be held before the 16th day after the date the notice is mailed under Subsection (a)(2). (V.T.I.C. Art. 14.61, Secs. 1(a) (part), (b) (part).)

Source Law

> (a) . . . Upon receipt of such Board's written approval of such plans, or of such plans amended to meet the requirements of such Board in accordance with the provisions of said chapters, said board of directors or such officer of such association as may be authorized by its by-laws to call a meeting of its members, shall mail to each member a copy of the proposed plans and shall enclose with each copy of such plans a notice of a meeting of said members to be held not earlier than fifteen (15) days after the date of mailing of such notice.
>
> (b) Such meeting shall be held for the purpose of ratification or rejection of the proposed change, and . . . .

Revised Law

Sec. 887.454. MEMBERS MEETING; PROCEDURES. (a) In a meeting called under Section 887.453, a member may vote in person, by proxy, or by mail.

(b) All votes must be cast by ballot. A majority vote of the members participating in the election is required to ratify the conversion or reinsurance.

(c) The person presiding at the meeting shall supervise and direct the procedure of the meeting and appoint an adequate number of inspectors to conduct the voting.

(d) Under rules adopted by the commissioner, the inspectors may determine all questions concerning the qualifications of the voters and the verification, canvassing, and validity of the ballots. The inspectors shall certify the result of the election to the commissioner and to the association. (V.T.I.C. Art. 14.61, Sec. 1(b) (part).)

Source Law

> (b) [Such meeting shall be held for the

purpose of ratification or rejection of the proposed change, and] the members may vote in person, by proxy, or by mail; provided that all votes shall be cast by ballot, and the Chairman of the meeting shall supervise and direct the method of procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting, who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the Chairman of the Board of Insurance Commissioners and to the association the result thereof, under such rules and regulations as shall be prescribed by the Board of Insurance Commissioners. A majority vote cast shall be sufficient for ratification of said change.

Revised Law

Sec. 887.455. COMPLETION AND LEGAL EFFECT OF CONVERSION OR REINSURANCE. (a) An association's conversion or reinsurance is complete when the association has:

(1) complied with all laws regulating the incorporation of a mutual legal reserve insurance company; and

(2) received from the commissioner its charter and certificate of authority to engage in business as a mutual insurance company.

(b) An association that converts or reinsures to a mutual legal reserve insurance company:

(1) is considered by law to have each right, privilege, power, or authority of any other mutual legal reserve company;

(2) is considered by law to be a continuation of the business of the association; and

(3) succeeds to and is invested with:

(A) each right or privilege of the former association that is not inconsistent with Chapter 882;

(B) each franchise or other interest of the former association; and

(C) all property of the former association, including debts due on any account and all choses in action.

(c) On conversion or reinsurance of an association to a mutual legal reserve insurance company, the title to any real estate by deed or otherwise vested in the former association vests in the company, and the title is not in any way impaired because of the conversion or reinsurance. (V.T.I.C. Art. 14.61, Sec. 1(c) (part).)

Source Law

(c) When such association shall have complied with the provisions of this Article and the other laws of this State regulating the incorporation of such mutual legal reserve insurance companies, and shall have received from the Board of Insurance Commissioners its charter and certificate of authority to transact business as a mutual insurance company, its reorganization and conversion shall be complete. Such reorganized and converted or reinsured corporation shall be deemed in law to have the rights, privileges, powers and authority of any other corporation organized in accordance with the provisions of said Chapters. The new corporation shall be deemed in law to be a continuation of the business of the former association and shall succeed to and become invested with all and singular the rights and privileges not inconsistent with the provisions of said Chapters, and all property, real, personal or mixed of the former association, and all debts due on any account, and all other things and choses in action theretofore belonging to such association, and all property, rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as if they were the property of the former association, and the title to any real estate by deed or otherwise vested in the former association shall forthwith vest in such organized converted corporation and the title thereto shall not in any way be impaired by reason of such change or reincorporation. . . .

Revisor's Note

Section 1(c), V.T.I.C. Article 14.61, provides that, on conversion of an association to a mutual legal reserve insurance company, the company shall "succeed to and become invested with all and singular the rights and privileges not inconsistent with the provisions of said Chapters, and all property, real, personal or mixed of the former association, and all debts due on any account, and all other things and choses in action theretofore belonging to such association, and all property, rights, privileges, franchises, and all other interest, shall thereafter be as effectually the property of such organized and converted corporation as if they were the property of the former association." The revised law omits the references to "real," "personal," and "mixed" property because under Section 311.005(4), Government Code (Code Construction Act), "property" includes real and personal property and, by extension, mixed property. That definition applies to the revised law. The reference to "things . . . in action" is omitted from the revised law because "things in action" is included within the meaning of "choses in action." The reference to "all other interest" is omitted from the revised law because "all other interest" is included within the meaning of "all . . . rights . . . and . . . property." The provision that the property of the former association "shall thereafter be as effectually the property of such . . . corporation" is omitted from the revised law as unnecessary; providing that the property vests in the company means that the property will effectually be the company's.

Revised Law

Sec. 887.456. CONTINUING OBLIGATIONS OF CONVERTED OR REINSURED ASSOCIATION. (a) The standing of each claim against an association that converts or reinsures under this subchapter must be preserved unimpaired under the reorganized company or the company reinsuring the membership of the association.

(b) Each debt, liability, and duty of a converted or reinsured association attaches to the reorganized company or the company reinsuring the membership of the association and may be enforced against it to the same extent as if the debt or liability had been incurred or contracted by the company, except that a reorganized company or reinsuring company may alter a liability created under the terms of an insurance certificate outstanding at the date of conversion or reinsurance in accordance with the plan approved by the commissioner under this subchapter.

(c) Notwithstanding Subsection (b), the company may not alter the renewability or noncancellability of an insurance certificate issued before the date of conversion or reinsurance. (V.T.I.C. Art. 14.61, Sec. 1(c) (part).)

Source Law

> (c) . . . The standing of all claims under the former association shall be preserved unimpaired under the new corporation, and all debts, liabilities and duties of the former association shall thenceforth attach to the reorganized corporation and may be enforced against it to the same extent as if said debts and liabilities had been incurred or contracted by the new corporation, except that the liabilities created under the terms of policies or certificates outstanding at the date of conversion or reorganization may be altered in accordance with the provisions of said plans approved by the Board of Insurance Commissioners; provided, however, that no alteration shall be made in the renewability or noncancellability of any insurance agreement, contract, policy or certificate theretofore made or issued.

Revised Law

Sec. 887.457. DISBURSEMENT OF MORTUARY FUND. (a) The mortuary fund belonging to an association that converts or reinsures under this subchapter is the property of the reorganized company or the company reinsuring the membership of the former association. Money in the mortuary fund may be disbursed to:

(1) pay a valid claim outstanding and arising after the date of conversion or reinsurance from an insurance policy issued by the company to the association's members under an approved plan;

(2) establish the legal reserve on new insurance policies issued by the company to the association's members under an approved plan; or

(3) pay the appropriate actuarial portion of the mortuary fund to a member of the association who refuses to accept a new insurance policy offered by the company.

(b) A member must request payment under Subsection (a)(3) not later than the 60th day after the date of the conversion or reinsurance.

(c) The effective date of a mutual legal reserve company's insurance policy may be the effective date of the reinsurance contract. On conversion, 10 percent of the mortuary fund credit allocated to each policy may be credited to the contingency reserve fund of the company for the benefit of the policyholders. The balance of the mortuary fund credit may be applied as:

(1) a reserve credit to permit the company's policy to be backdated to the earliest date the reserve credit allows; or

(2) an annuity to reduce the required premium either for a given term or for the whole of life.

(d) A company may not change the manner in which a mortuary fund credit is applied under Subsections (c)(1) and (2) without the prior approval of the commissioner. (V.T.I.C. Art. 14.61, Sec. 2.)

<u>Source Law</u>

Sec. 2. The sums of any mortuary funds belonging to such association shall thereafter be effectually the property of such organized and converted corporation or corporation reinsuring the membership of such association, but may be disbursed for payment of valid claims outstanding and arising thereafter from policies issued by the legal reserve company to the members of the assessment association under the approved agreement; to set up the legal reserve on new policies issued by the legal company to the members of the assessment association under said agreement; and to pay their actuarial portion of such mortuary fund to members of such association who refuse to accept the new policies offered them, and who make request therefor within sixty (60) days from the date of conversion or reinsurance.

The effective date of the legal reserve policies may be the effective date of the reinsurance contract. On conversion ten (10%) per cent of the mortuary fund credit allocated to each policy may be credited to the contingency reserve fund of the company for the benefit of the policyholders, and the balance of the mortuary credit may be applied in either of the following ways:

(a) As a reserve credit to permit the legal reserve policy issued to be dated back as far as the reserve credit will permit; or

(b) As an annuity to reduce the required premium either for a given term or for the whole of life.

(c) No change shall ever be made until same shall have been approved by the Board of Insurance Commissioners.

Revisor's Note
(End of Subchapter)

Section 3, V.T.I.C. Article 14.61, provides that Article 14.61 is permissive and that the Board of Insurance Commissioners may not require an association to convert or reinsure to a legal reserve company. The revised law omits that provision as unnecessary because Section 887.451, which authorizes conversion or reinsurance, is clearly permissive and not mandatory, and nothing in this subchapter may be read as permitting the commissioner or department to require an association to convert or reinsure. The omitted law reads:

Sec. 3. Providing further that nothing in this article or in the provisions of Chapter 11 or Chapter 3 of this code shall ever be construed to mean that any of the associations or other similar concerns, by whatsoever name or class designated, whether specifically named herein or not, shall be required by the Board of Insurance Commissioners to make the change herein provided for unless they voluntarily decide to do so, and that this article is purely permissive and if such associations do not so voluntarily decide to come under this article, or laws amended by it, then this article shall not in any way apply to such association.

[Sections 887.458-887.500 reserved for expansion]

SUBCHAPTER K. CONVERSION TO STOCK LEGAL RESERVE LIFE INSURANCE COMPANY

Revised Law

Sec. 887.501. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a local mutual aid association or statewide mutual assessment company or association engaging in business in this state on January 1, 1955. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Art. 14.63

Sec. 1. Any local mutual aid association or statewide mutual assessment company or association doing business in this State on January 1, 1955, [may convert into a stock legal reserve life insurance company] . . . .

Revised Law

Sec. 887.502. AUTHORIZATION TO CONVERT. An association may convert to a stock legal reserve life insurance company if the association:

(1) has at least $100,000 in the association's mortuary fund at the time of conversion; and

(2) except as provided by Section 887.508, possesses:

(A) capital in an amount equal to at least $700,000 cash; and

(B) surplus in an amount equal to at least $700,000 cash. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. Any local mutual aid association or statewide mutual assessment company or association [doing business in this State on January 1, 1955,] may convert into a stock legal reserve life insurance company, provided such company or association so converted has at least One Hundred Thousand ($100,000.00) Dollars in its claim or mortuary fund at the time of such conversion and complies with the following provisions:

a. Except as provided by Section 2 of this article, there shall be contributed in cash of the United States the additional sum of not less than Seven Hundred Thousand ($700,000.00) Dollars in capital and not less than Seven Hundred Thousand ($700,000.00) Dollars in surplus.

. . .

Revised Law

Sec. 887.503. APPROVAL BY MEMBERSHIP. An association may convert under this subchapter only if the association's membership votes to approve the conversion at a meeting called for that purpose. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. . . .

c. Such conversion shall only be made upon a vote of the membership duly called for such purposes. . . .

Revised Law

Sec. 887.504. AMENDMENT OF CHARTER OR ARTICLES OF ASSOCIATION REQUIRED. On authorization under Section 887.503, the board of directors and officers of the association shall amend the association's charter or articles of association to comply with Sections 841.051, 841.052, and 841.053. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. . . .

c. . . . Pursuant to such authorization, the board of directors and officers of such company or association shall amend its existing charter or articles of association, as the case may be, so as to comply with the requirements contained in Article 3.02 of this Code, as amended, except as to the capital and surplus requirements thereof.

. . .

Revised Law

Sec. 887.505. EXCHANGE OF INSURANCE CERTIFICATES; RESERVES. (a) An association that converts to a stock legal reserve life insurance company shall exchange each insurance certificate in force on the date of the conversion for a legal reserve policy as provided by Section 887.457.

(b) On the exchange of mutual assessment insurance certificates for legal reserve policies as provided by Subsection (a), an association shall establish and maintain the reserves required for a company organized under Chapter 841 for legal reserve policies.

(c) After the reserves are established, the association's capital must remain unimpaired and in an amount equal to at least $700,000. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. . . .

b. All policies of insurance in force shall be exchanged for a legal reserve policy in accordance with the provisions of Section 2 of Article 14.61 of this Code.

. . .

d. After the exchange of such mutual assessment policies for legal reserve policies in accordance with the provisions of Section 2 of Article 14.61, the proper legal reserve required by Chapter 3 of this Code, as amended, shall be established and maintained for such policies so as to leave the capital of the company at all times unimpaired and not less than Seven Hundred Thousand ($700,000.00) Dollars.

Revisor's Note

Section 1, V.T.I.C. Article 14.63, refers to a "proper legal reserve" required by V.T.I.C. Chapter 3. The portions of Chapter 3 that relate to the organization of companies that are subject to the appropriate reserve requirements are revised as Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 887.506. COMPLETION OF CONVERSION. An association becomes a stock legal reserve life insurance company on:

(1) compliance with this subchapter; and

(2) approval by the commissioner. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. . . .

e. After compliance with the provisions hereof, and approval of the same by the State Board of Insurance, such company or association shall be and become a legal reserve stock life insurance company . . . .

Revised Law

Sec. 887.507. LEGAL EFFECT OF CONVERSION. Except as provided by this subchapter, an association that converts to a stock legal reserve life insurance company under this subchapter is subject to Chapter 841. (V.T.I.C. Art. 14.63, Sec. 4.)

Source Law

Sec. 4. From and after the date of such conversion such legal reserve stock life insurance company shall be governed by the provisions of Chapter 3 of the Insurance

Code, as amended, except as otherwise herein provided.

Revisor's Note

Section 4, V.T.I.C. Article 14.63, provides that a company that converts under Article 14.63 is subject to V.T.I.C. Chapter 3. The relevant portions of Chapter 3, relating to the organization of domestic legal reserve stock life insurance companies, are revised in Chapter 841. The revised law is drafted accordingly.

Revised Law

Sec. 887.508. EXEMPTION FROM CAPITAL AND SURPLUS REQUIREMENTS. (a) An association is exempt from the capital and surplus requirements of Section 887.502(2) if the association:

(1) possesses capital in an amount equal to at least $100,000 and unencumbered surplus in an amount equal to at least $100,000; and

(2) converted to a stock legal reserve life insurance company before September 1, 1999.

(b) An association that is exempt under Subsection (a) and that converts on or after September 1, 1989, shall immediately increase its capital and surplus to amounts that satisfy Section 887.502(2) on:

(1) a change of control of at least 50 percent of the voting securities of the converted company; or

(2) if the converted company or the holding company that controls the converted company, if any, is not controlled by voting securities, a change of at least 50 percent of the ownership of the converted company or its holding company.

(c) For purposes of Subsection (b), a transfer of ownership because of death, regardless of whether the decedent died testate or intestate, is not considered a change of control of a converted company or its holding company if ownership is transferred only to one or more individuals, each of whom would have been an heir of the decedent had the decedent died intestate. (V.T.I.C. Art. 14.63, Sec. 2.)

Source Law

Sec. 2. (a) The requirement under Section 1 of this article that a converted local mutual aid association or statewide mutual assessment company or association have capital of at least Seven Hundred Thousand ($700,000.00) Dollars and surplus of at least Seven Hundred Thousand ($700,000.00) Dollars does not apply to a local mutual aid association or statewide mutual assessment company or association that converts to a Chapter 3 company, if:

(1) a converted local mutual aid association or statewide mutual assessment company or association shall be possessed with at least One Hundred Thousand ($100,000.00) Dollars in capital and at least One Hundred Thousand ($100,000.00) Dollars in free and unencumbered surplus; and

(2) the conversion takes effect before September 1, 1999.

(b) A local mutual aid association or statewide mutual assessment company or association that is converted on or after September 1, 1989, and that has, after conversion, less than Seven Hundred Thousand ($700,000.00) Dollars capital and Seven Hundred Thousand ($700,000.00) Dollars surplus may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority. However, a local mutual aid association or statewide mutual assessment company or association that is converted on or after September 1, 1989, must increase its capital to at least Seven Hundred Thousand ($700,000.00) Dollars and its surplus to at least Seven Hundred Thousand ($700,000.00) Dollars immediately after any change of control of the converted local mutual aid association or statewide mutual assessment company or association or any holding company controlling the converted local mutual aid association or statewide mutual assessment company or association if, after August 31, 1989:

(1) there is a change of control of at least 50 percent of the voting securities of the converted company or association; or

(2) if the converted company or association or holding company is not controlled by voting securities, there is a change of at least 50 percent of the ownership of the local mutual aid association or statewide mutual assessment company or association or holding company.

(c) For the purposes of Subsection (b) of this section, a transfer of ownership that occurs because of death, irrespective of whether the decedent died testate or intestate, is not considered a change of control of a converted local mutual aid association or statewide mutual assessment company or association or change of control of a holding company, if ownership is transferred solely to one or more natural persons, each of whom would be an heir of the decedent if the decedent had died intestate.

Revisor's Note

Section 2(b), V.T.I.C. Article 14.63, provides that an association exempted from capital and surplus requirements under Section 2(a) "may continue to transact the kind or kinds of insurance business for which it has been issued a Texas certificate of authority." The revised law omits the quoted language because the association's certificate of authority is unchanged by the conversion and permits the company to transact only those kinds of business.

Revised Law

Sec. 887.509. LIMITS ON OPERATION OF CONVERTED ASSOCIATION. Unless the association increases the association's capital and surplus to the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under Chapter 841, an association that converts to a stock legal reserve life insurance company under this subchapter may not:

(1) operate in a territory as to which the association was not authorized under the converted association's previous charter or articles of association;

(2) insure a life for more than $5,000 in event of death; or

(3) declare or pay cash dividends. (V.T.I.C. Art. 14.63, Sec. 1 (part).)

Source Law

Sec. 1. . . .

e. [After compliance with the provisions hereof, and approval of the same by the State Board of Insurance, such company or association shall be and become a legal reserve stock life insurance company,] except that such company so converted shall not: (1)

operate in any territory not previously authorized under the old charter or articles of association, as the case may be; nor (2) insure any life for more than Five Thousand ($5,000.00) Dollars in event of death; nor (3) declare or pay any cash dividends; unless and until the capital and surplus of such converted company or association shall be increased to the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under the provisions of Chapter 3 of this Code.

Revised Law

Sec. 887.510. INCREASE OF CAPITAL AND SURPLUS REQUIRED. (a) An association that converts to a stock legal reserve life insurance company under this subchapter shall, not later than the 10th anniversary of the date of conversion, increase its capital and surplus to the minimum capital and surplus required for a stock legal reserve life insurance company organized under Chapter 841.

(b) The commissioner shall revoke a converted association's certificate of authority to engage in the business of insurance if the association does not comply with Subsection (a).

(V.T.I.C. Art. 14.63, Sec. 3.)

Source Law

Sec. 3. Any such company or association so converted shall within ten (10) years from the date of its conversion increase its capital and surplus to the minimum capital and surplus then required to organize a stock legal reserve life insurance company under the provisions of Chapter 3 of the Insurance Code, or its certificate of authority to do business shall be revoked by the Board of Insurance Commissioners.

Revisor's Note

Section 3, V.T.I.C. Article 14.63, refers to the minimum capital and surplus required to organize a stock legal reserve life insurance company under V.T.I.C. Chapter 3. The portions of Chapter 3 that relate to the organization of stock legal reserve life insurance companies that are subject to the appropriate minimum capital and surplus requirements are revised as Chapter 841. The revised law is drafted accordingly.

[Sections 887.511-887.550 reserved for expansion]

SUBCHAPTER L. GENERAL FINANCIAL REGULATION

Revised Law

Sec. 887.551. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION. Articles 1.32, 21.28, and 21.28-A apply to an association engaged in the business of insurance in this state. (New.)

Revisor's Note

V.T.I.C. Article 14.33 established procedures for conservatorship of an association that is insolvent or that is in a condition that renders continuance of its business hazardous to the public. Article 14.33 was last amended in 1965. After the enactment of Article 14.33, the legislature established comprehensive procedures applicable to those associations. Together with V.T.I.C. Article 21.28, the later enacted provisions, which are contained in V.T.I.C. Article 1.32, originally enacted in 1975, and V.T.I.C. Article 21.28-A, originally enacted in 1967, completely subsume and replace the procedures established under Article 14.33. As a result, the revised law omits Article 14.33 as impliedly repealed and adds a reference to Articles 1.32, 21.28, and 21.28-A for the convenience of the reader. The omitted law reads:

Art. 14.33. If, upon an examination or at any other time, it appears to the Commissioner that such association be insolvent, or its condition be, in the opinion of the Commissioner, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such association appears to have exceeded its powers or failed to comply with the law, or has a membership of less than five hundred (500) paying their assessments, then the Commissioner shall notify the association of his determination and said association shall have thirty (30) days under the supervision of the Commissioner within which to comply with the requirements of the Commissioner; and in the event of its failure to comply within such time, the Commissioner, acting for himself, or through a conservator appointed by the Commissioner for that purpose, shall immediately take charge of such association, and all of the property and effects thereof.

If the Commissioner is satisfied that such association can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Commissioner, pending the election of new directors and officers by the membership in such manner as the Commissioner may determine, the same shall be done, and the conservator may, with the approval of the Commissioner, reinsure any part of such company's policies or certificates of insurance with some solvent insurance company or association authorized to transact business in this State. The conservator may transfer to the reinsurance company such mortuary funds or other assets or portions thereof as may be required to reinsure such policies or certificates. If the Commissioner, however, is satisfied that such association is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Commissioner shall proceed to reinsure the outstanding policies in some solvent association or company, authorized to transact business in this State, or the Commissioner shall proceed through such conservator to liquidate such association, or the Commissioner may give notice to the Attorney General who shall thereupon apply to any court in Travis County having jurisdiction thereof for leave to file a suit in the nature of quo warranto to forfeit the charter of such corporation or to require it to comply with the law or to satisfy the Commissioner as to its solvency. The court may, in its discretion, appoint agents or receivers to take charge of the effects and wind up the business of the corporation, under usages and practices of equity; and may make disposition of the business and membership of the corporation as in the discretion of the court may seem proper. No suit for receiver shall be filed against any such corporation, nor shall any receiver be appointed, except upon the application therefor by the Attorney General, and in no event shall any receiver for any such corporation be appointed until after reasonable notice has issued and a hearing had before the court.

It shall be in the discretion of the Commissioner to determine whether or not he will operate the association through a conservator, as provided above, or proceed to liquidate the association, or report it to the Attorney General, as herein provided.

When the policies of an association are reinsured or liquidated, as herein provided, the Commissioner shall report the same to the Attorney General, who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the association so reinsured or liquidated. Where the Commissioner lends his approval to the merger, transfer, or consolidation of the membership of one association with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the association from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of associations reinsured or liquidated. No merger or transfer shall be approved unless the association assuming the members transferred or merged is operating under the supervision of the Commissioner of Insurance. The cost incident to the conservator's services shall be fixed and determined by the Commissioner and shall be a charge against the assets and funds of the association to be allowed and paid as the Commissioner may determine.

[Sections 887.552-887.700 reserved for expansion]

SUBCHAPTER O. PENALTIES

<u>Revised Law</u>

Sec. 887.701. UNLAWFUL CONVERSION; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney

in fact of an association commits an offense if the person:

(1) fraudulently takes, misapplies, or converts to the person's own use any money, property, or other item of value belonging to the association or coming into the person's custody, control, or possession by virtue of the person's office, agency, or employment;

(2) conceals any item described by Subdivision (1) with the intent to take, misapply, or convert the item to the person's own use; or

(3) pays or delivers any item described by Subdivision (1) to any other person, knowing that the other person is not entitled to receive the item.

(b) An offense under this section is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years. (V.T.I.C. Art. 14.55.)

Source Law

Art. 14.55. If any director, officer, agent, employee, attorney at law or attorney in fact, of any association under this chapter, shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such association, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner, or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Revisor's Note

(1) V.T.I.C. Article 14.55 refers to "the penitentiary." Throughout this subchapter, the revised law substitutes "the institutional division of the Texas Department of Criminal Justice" to conform to the changes in law made by Chapter 785, Acts of the 71st Legislature, Regular Session, 1989, transferring to that division the powers and duties that were previously those of the Texas Department of Corrections, the state agency with jurisdiction over the

penitentiaries in this state.

(2) V.T.I.C. Article 14.55 refers to "custody, control, possession or management" of an item. The revised law omits the reference to "management" as included within the meaning of "custody, control, or possession."

Revised Law

Sec. 887.702. DIVERSION OF SPECIAL FUNDS; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of an association commits an offense if the person wilfully borrows, withholds, or diverts from its purpose all or part of a special fund that:

(1) belongs to or is under the management and control of an association; and

(2) is designated by law or by rule of the commissioner for a specific use.

(b) An offense under this section is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years. (V.T.I.C. Art. 14.56.)

Source Law

Art. 14.56. If any director, officer, agent, employee, attorney at law, or attorney in fact of any association under this chapter, shall willfully borrow, withhold or in any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any association under this chapter, which has been set apart by law or by any valid rule or regulation of the Board of Insurance Commissioners of the State of Texas for a specific use, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Revised Law

Sec. 887.703. APPROPRIATION OF MONEY; CRIMINAL PENALTY. (a) An officer or employee of a mutual accident insurance company commits an offense if the person uses or appropriates, or knowingly permits the use or appropriation by another of, any money belonging to the company in a manner not provided for by the law authorizing the organization of the company.

(b) An offense under this section is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years. (V.T.I.C. Art. 14.56-1.)

Source Law

Art. 14.56-1. Any officer or any employ¿e of a mutual accident insurance company, incorporated under the laws of this State, who shall use or appropriate, or knowingly permit to be used or appropriated by another, any money belonging to such mutual insurance company, in any manner other than is provided in the law authorizing the organization of such company, shall be confined in the penitentiary not less than two nor more than ten years.

Revised Law

Sec. 887.704. VIOLATION OF COMMISSIONER ORDER; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of an association commits an offense if the person wilfully fails to comply with a lawful order of the commissioner.

(b) An offense under this section is punishable by:

(1) a fine not to exceed $500;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement. (V.T.I.C. Art. 14.58.)

Source Law

Art. 14.58. If any director, officer, agent, employee, or attorney at law or attorney in fact of any association under this chapter, shall willfully refuse or fail to comply with any lawful order of the Board of Insurance Commissioners of this State he shall be punished by fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Revised Law

Sec. 887.705. OTHER VIOLATIONS; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of an association or other person commits an offense if the person violates a provision of this chapter other than Section 887.701, 887.702, 887.703, or 887.704.

(b) An offense under this section is punishable by:

(1) a fine not to exceed $500;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement. (V.T.I.C. Art. 14.59 (part).)

Source Law

Art. 14.59. If any director, officer, agent, employee or attorney at law or attorney in fact of any association under this chapter, or any other person, shall violate any of the provisions of this chapter not specifically set out in Articles 14.55, 14.56, 14.57, 14.58 and [14.46] of this chapter, he shall be punished by fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Revisor's Note

V.T.I.C. Article 14.59 provides that a person commits an offense if the person violates "any of the provisions of this chapter not specifically set out in Articles 14.55, 14.56, 14.57, [and] 14.58." The revised law omits the reference to Article 14.57 because the part of that article that creates an offense is omitted as impliedly repealed. See the revisor's note at the end of this subchapter. The revised law includes a reference to Section 887.703, which is derived from V.T.I.C. Article 14.56-1. Article 14.56-1 was transferred to Chapter 14 from Article 588, Vernon's Texas Penal Code (1925), by authority of Section 5, Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, which enacted the current Penal Code, and is clearly an exception to Article 14.59.

Revisor's Note

(End of Subchapter)

The revised law omits part of V.T.I.C. Article 14.57 as impliedly repealed. Article 14.57 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951. Article 14.57 in part provides that "any officer, director, agent, employee, attorney at law or attorney in fact, of any association under this chapter" commits an offense if the person "shall willfully make any false affidavit in connection with the requirements of this chapter." Section 37.02, Penal Code, which was enacted by Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, provides that a person commits an offense if, "with intent to deceive and with knowledge of the statement's meaning . . . he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath." Section 37.02 applies to any false statement under oath, including a "false affidavit," and, as the later enactment, impliedly repealed the part of Article 14.57 dealing with false affidavits. The omitted law reads:

Art. 14.57. . . . If any officer, director, agent, employee, attorney at law or attorney in fact, of any association under this chapter shall willfully make any false affidavit in connection with the requirements of this chapter, he shall be punished by a fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years.

Revisor's Note

(End of Chapter)

Subsection (b), V.T.I.C. Article 14.06, provides that V.T.I.C. Chapter 14 may not be construed to "validate or otherwise sanction any unlawful act" of an association except to the extent that the association violates a law because the law under which the association was created was subsequently repealed or amended so as to omit the association from the applicability of Chapter 14. The revised law omits that provision as unnecessary. The first clause is unnecessary because a statute is not normally construed to validate unlawful acts. The second clause is unnecessary because under the ex post facto principle in Section 16, Article I, Texas Constitution, an action taken under a statute cannot become unlawful if the statute is repealed or amended. The omitted law reads:

(b) Nothing in this chapter shall be construed to validate or otherwise sanction any unlawful act of any such corporation, except when such unlawful act may have been construed to be unlawful simply by reason of the fact that the law under which said corporation was created has since been repealed or amended so as to omit therefrom such corporations as are described in this chapter.

CHAPTER 888. BURIAL ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 888.007-888.050 reserved for expansion]

SUBCHAPTER B. ANNUAL ASSESSMENT

[Sections 888.053-888.100 reserved for expansion]

SUBCHAPTER C. INSURANCE CERTIFICATES; PAYMENT OF BENEFITS

[Sections 888.104-888.150 reserved for expansion]

SUBCHAPTER D. RATES FOR BURIAL ASSOCIATIONS

CHAPTER 888. BURIAL ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 888.001. DEFINITIONS. In this chapter:

(1) "Burial association" means an individual, firm, partnership, association, or corporation engaged in the business of providing burial or funeral benefits payable partly or wholly in merchandise or services, not to exceed $150 or the value thereof. The term includes a burial company and a burial society.

(2) "Insurance certificate" and "member" have the meanings assigned by Section 887.001. (V.T.I.C. Art. 14.37 (part); New.)

Source Law

Art. 14.37. Any individuals, firms, co-partnerships, corporations or associations doing the business of providing burial or funeral benefits, which under any circumstances may be payable partly or wholly in merchandise or services, not in excess of One Hundred and Fifty ($150.00) Dollars, or the value thereof, are hereby declared to be burial companies, associations or societies, and . . . .

Revisor's Note

V.T.I.C. Article 14.02, revised as Section 887.001, defines "insurance certificate" and "member." Those definitions are applicable to the articles in V.T.I.C. Chapter 14 that are revised in this chapter, and the revised law is drafted accordingly.

Revised Law

Sec. 888.002. LIBERAL CONSTRUCTION. Sections 888.051, 888.052, 888.102(b), 888.151, 888.152, 888.153, 888.154, 888.155, 888.156, 888.157, 888.202, 888.203, and 888.204 shall be liberally construed. (V.T.I.C. Art. 14.51 (part).)

Source Law

Art. 14.51. . . . the provisions of Articles 14.42 through 14.52 of this chapter shall be liberally construed and . . . .

Revised Law

Sec. 888.003. BYLAWS OF BURIAL ASSOCIATIONS. The bylaws of a burial association may not contain any provision in conflict with this chapter. (V.T.I.C. Art. 14.04 (part).)

Source Law

Art. 14.04. . . . Such by-laws . . . shall not contain any provision in conflict with this chapter. . . .

Revised Law

Sec. 888.004. RULES TO IMPLEMENT PURPOSES OF CHAPTER. The commissioner may adopt reasonable rules to implement the purposes of this chapter. (V.T.I.C. Art. 14.39.)

Source Law

Art. 14.39. The Board is hereby authorized to promulgate reasonable rules and regulations to carry out the purposes of this chapter.

Revisor's Note

(1) V.T.I.C. Article 14.39 refers to "the Board," meaning the State Board of Insurance Commissioners. Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively.

Throughout this chapter, references to the Board of Insurance Commissioners and the State Board of Insurance have been changed appropriately.

(2) V.T.I.C. Article 14.39 refers to "rules and regulations." Throughout this chapter, the revised law omits "regulations" because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 888.005. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a burial association. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to burial associations.

(b) On advance approval of the commissioner, a burial association may pay dividends to its members. (V.A.C.S. Art. 1396-10.04, Sec. B (part).)

Source Law

B. In so far as the same are not inconsistent with or contrary to any applicable provision of the Insurance Code of Texas, or any amendment thereto, the provisions of this Act shall apply to and govern burial associations as defined in Article 14.37, Texas Insurance Code . . . ; provided however, (a) that any such mutual insurance associations or companies may, upon advance approval of the Commissioner of Insurance, pay dividends to its members, and (b) that wherever in this Act some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the Secretary of State, such is to be vested in, required of, or performed by the Commissioner of Insurance in so far as such . . . associations are concerned.

Revisor's Note

(1) Section B, V.A.C.S. Article 1396-10.04, states that the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) shall "apply

to and govern" burial associations. The revised law omits the reference to "govern" because, in context, "govern" is included within the meaning of "apply to."

(2) Section B, V.A.C.S. Article 1396-10.04, refers to the Insurance Code "or any amendment thereto." The revised law omits the reference to "any amendment thereto" because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(3) Section B, V.A.C.S. Article 1396-10.04, refers to a "duty, responsibility, power, [or] authority" of the secretary of state and commissioner of insurance. The revised law substitutes "power and duty" for the quoted phrase because "responsibility" is included within the meaning of "duty" and "authority" is included within the meaning of "power."

(4) Section B, V.A.C.S. Article 1396-10.04, refers to an act "vested in, required of, or to be performed by" the secretary of state and commissioner of insurance. The revised law omits the references to "vested in" and "required of" because, in context, these phrases are included within the meaning of the phrase "to be performed by."

Revised Law

Sec. 888.006. APPLICABILITY OF OTHER LAW. A burial association is subject to Chapter 887. (New.)

Revisor's Note

V.T.I.C. Chapter 14, revised as this chapter and as Chapter 887, applies to a burial association. See V.T.I.C. Article 12.01, revised in pertinent part as Section 886.002. For the convenience of the reader, the revised law adds a reference to Chapter 887.

Revisor's Note

(End of Subchapter)

V.T.I.C. Article 14.37 requires a burial company to organize under provisions of V.T.I.C. Chapter 12 and operate under and be governed by that chapter and V.T.I.C. Chapter 14. Article 14.37 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951. The revised law omits the requirement that a burial company organize under Chapter 12 as impliedly repealed by the subsequent enactment of V.T.I.C. Article 22.21 (revised as Section 886.004), which provides that "no . . . local mutual burial association may be organized under and pursuant to the provisions of Art. 12.05 of the Insurance Code of Texas." Article 22.21 was enacted by Chapter 180, Acts of the 57th Legislature, Regular Session, 1961. The revised law omits the requirement that a burial company operate under and be governed by V.T.I.C. Chapter 12 as unnecessary. Section 886.001, which revises part of V.T.I.C. Article 12.01, and Section 886.002, which revises part of V.T.I.C. Articles 12.01 and 12.16, make clear that Chapter 886 applies to a burial association, and it is unnecessary to include an express statement of the applicability of that law in this chapter. The revised law omits the requirement that a burial company operate under and be governed by this chapter, meaning V.T.I.C. Chapter 14, as unnecessary because those provisions of V.T.I.C. Chapter 14, revised as this chapter, and those provisions of V.T.I.C. Chapter 14, revised as Chapter 887, clearly apply by their own terms to a burial association. The omitted law reads:

Art. 14.37. . . . [burial companies, associations or societies] . . . shall organize under provisions of Chapter 12, and shall operate under and be governed by Chapter 12 and this chapter. . . .

[Sections 888.007-888.050 reserved for expansion]

SUBCHAPTER B. ANNUAL ASSESSMENT

Revised Law

Sec. 888.051. IMPOSITION OF ANNUAL ASSESSMENT; AMOUNT. (a) An annual assessment is imposed on each burial association that holds a certificate of authority to engage in the business of insurance in this state. The assessment is in addition to any other fee that the association is required to pay.

(b) The amount of the assessment is equal to the greater of:

(1) the amount computed by multiplying one-half cent by the number of members in the burial association on December 31 of the applicable year; or

(2) $5. (V.T.I.C. Art. 14.42 (part).)

Source Law

Art. 14.42. There is levied upon each burial association having a permit to do business in Texas, an annual assessment of one-half of one cent (1/2 of 1¢) per member in the association as of December thirty-first of each year but not less than Five ($5.00) Dollars annually, which shall be in addition to any other fees now payable and . . . .

Revisor's Note

V.T.I.C. Article 14.42 refers to the "permit" of a burial association. Throughout this chapter, the revised law substitutes "certificate of authority" for "permit" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 888.052. PAYMENT OF ANNUAL ASSESSMENT. (a) Each burial association shall pay the annual assessment imposed by Section 888.051 to the department between January 1 and March 1 at the same time the association files its annual statement with the department.

(b) Annual assessments collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account. Article 1.31A applies to the assessments.

(c) All assessments paid to the department under this section are for the use and benefit of the department to:

(1) obtain advice, information, and knowledge relating to adequate and reasonable rates for burial associations in this state;

(2) compile records for purposes of Subdivision (1); and

(3) implement Sections 888.051, 888.052, 888.102(b), 888.151, 888.152, 888.153, 888.154, 888.155, 888.156, 888.157, 888.202, 888.203, and 888.204. (V.T.I.C. Art. 14.42 (part).)

Source Law

Art. 14.42. . . . which assessment shall be paid by each association between January first and March first of each year. Said assessments shall be paid to the State Board of Insurance along with and at the same time each association files with said Board its annual statement. Said assessment shall be based upon the calendar year. All assessments paid to the State Board of Insurance under this article shall be and the same are here and now appropriated for and to the use and benefit of the State Board of Insurance for the purpose of obtaining advice, information, and knowledge relative to adequate and reasonable rates to be charged by burial associations of Texas and compiling records thereof and carrying out Articles 14.42-14.52 of this code. All assessments collected under this article shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to assessments under this article.

Revisor's Note

(1) V.T.I.C. Article 14.42 provides that an assessment shall be paid "between January first and March first of each year." That article also provides that the assessment shall be paid "along with and at the same time each association files . . . its annual statement." The revised law omits as unnecessary the requirement that the assessment be paid "along with" its annual statement. The quoted language is included within the meaning of the requirement that the assessment be paid "at the same time" the association files its annual statement.

(2) V.T.I.C. Article 14.42 provides that the annual assessment "shall be based upon the calendar year." The revised law omits the quoted language as misleading because other language in Article 14.42, revised as this section, provides that the assessment is annual and states the period during which the assessment must be paid.

(3) V.T.I.C. Article 14.42, last amended by Chapter 622, Acts of the 68th Legislature, Regular Session, 1983, purports

to appropriate fees to the State Board of Insurance for particular purposes. The revised law omits the putative appropriation because Section 6, Article VIII, Texas Constitution, prohibits continuous appropriations by limiting the maximum duration of an appropriation to two years.

(4) V.T.I.C. Article 14.42 requires that the annual assessments be deposited "in the State Treasury to the credit of the State Board of Insurance operating fund." The revised law substitutes "Texas Department of Insurance operating account" for "State Board of Insurance operating fund" to conform to the conversion of the fund to an account in the general revenue fund by the comptroller of public accounts under authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, and to the change in the name of the fund made by Section 1.09, Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993. The revised law omits the reference to the state treasury as unnecessary because Section 2, V.T.I.C. Article 1.31A, provides that the Texas Department of Insurance operating fund is in the state treasury.

[Sections 888.053-888.100 reserved for expansion]

SUBCHAPTER C. INSURANCE CERTIFICATES; PAYMENT OF BENEFITS

Revised Law

Sec. 888.101. INSURANCE CERTIFICATES ISSUED BY BURIAL ASSOCIATION. (a) Except as provided by Subsection (c), an insurance certificate issued by a burial association must provide for the payment of the benefit in specified merchandise or burial services.

(b) The merchandise or services to be provided must be:

(1) stated in the insurance certificate; and

(2) approved by the department as being of the reasonable value stated on the face of the certificate.

(c) Subsections (a) and (b) do not apply if, at the time the insurance certificate is issued, the insured elects to have the benefit paid in cash.

(d) An election under this section must be stated in the insurance certificate. (V.T.I.C. Art. 14.38 (part).)

Source Law

Art. 14.38. Policies or certificates issued by burial associations shall provide for payment of the benefit in certain stipulated merchandise and burial service, which shall be scheduled in the policy or certificate and approved by the Board of Insurance Commissioners as being of the reasonable value as stated in the face of the policy, unless the insured shall at the time said policy is issued elect to have same paid in cash. The policy shall show in writing the election made. . . .

Revised Law

Sec. 888.102. PAYMENT INSTEAD OF MERCHANDISE OR SERVICES. (a) If a burial association that issues an insurance certificate fails or refuses to provide the merchandise or services specified by the certificate, the association shall pay the benefit in cash.

(b) If a burial association that issues an insurance certificate is not given the opportunity to provide the merchandise or services specified by the certificate, instead of the specified merchandise or services, the association shall pay the greater of:

(1) the total amount paid into its mortuary fund to the credit of that certificate's account; or

(2) the percentage of the certificate's face value specified by the certificate. (V.T.I.C. Arts. 14.38 (part), 14.52.)

Source Law

Art. 14.38. . . . If the association issuing said policy shall fail or refuse to furnish the merchandise and services provided for in the policy same shall be paid in cash.

Art. 14.52. If a burial association is not given the opportunity to provide the merchandise and services stipulated in the policy it shall be required to pay not less than the total amount paid into its mortuary fund for account of said policy in lieu of the stipulated merchandise and services unless a greater per cent of the face value is specified in the policy.

Revised Law

Sec. 888.103. INSURANCE CERTIFICATE FORMS. An insurance certificate form used by a burial association on or after May 12, 1939, must comply with this chapter. (V.T.I.C. Art. 14.18

(part).)

Source Law

Art. 14.18. . . .

. . . All certificate forms hereafter used must be in accord with the provisions of this chapter and . . . .

Revisor's Note

V.T.I.C. Article 14.18 provides that certificate forms "hereafter used" must comply with that article and other laws regulating associations. The quoted language can only be read as meaning "certificate forms used on or after the effective date of this Act." Article 14.18 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951. Section 2 of that act provided that "[n]othing contained in this Act shall be held or construed to effect any substantive change in the laws existing prior to the passage of this Act." Article 14.18 was derived from Article 5068-1, Vernon's Texas Civil Statutes. Article 5068-1 was enacted by Chapter 6, page 401, General Laws, Acts of the 46th Legislature, Regular Session, 1939; that act took effect May 12, 1939. Accordingly, the revised law substitutes "on or after May 12, 1939," for "hereafter."

[Sections 888.104-888.150 reserved for expansion]

SUBCHAPTER D. RATES FOR BURIAL ASSOCIATIONS

Revised Law

Sec. 888.151. DATA COLLECTION RELATED TO RATES. (a) The commissioner shall:

(1) collect data, statistics, and information on the death rates, lapses, experiences, and other information relating to burial association rates in and outside of this state that the commissioner considers useful in determining reasonable and adequate rates for burial associations; and

(2) study the statistics, rates, and experiences of burial associations.

(b) The commissioner may distribute information collected under Subsection (a)(1) to burial associations in this state. (V.T.I.C. Arts. 14.47, 14.48 (part).)

Source Law

Art. 14.47. It shall be the duty of said

State Board of Insurance to gather such data, statistics, and information as it can from time to time as to the death rates, lapses, experiences and other information relative to burial association rates within, and without the State of Texas as may be deemed beneficial in fixing reasonable and adequate burial association rates and which information may be disseminated by the Board among the burial associations of Texas.

Art. 14.48. The Board's duties and power shall not cease upon the adoption of its first rate schedule, but it shall continue to study the statistics, rates, and experiences of burial associations and . . . .

Revisor's Note

V.T.I.C. Article 14.48 provides that "[t]he Board's duties and power shall not cease upon the adoption of its first rate schedule," meaning the initial rate schedule the State Board of Insurance was required to adopt following the abolition of the Burial Association Rate Board and the transfer of the rate board's ratemaking authority to the State Board of Insurance by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979. The revised law omits the quoted language as executed. Section 3 of that act required the State Board of Insurance to adopt its initial rate schedule for burial associations "within 90 days after the effective date of this Act." Chapter 593 was effective June 13, 1979.

Revised Law

Sec. 888.152. ADOPTION OF RATE SCHEDULE. (a) The commissioner shall adopt a schedule of reasonable and adequate rates that a burial association may charge its members. The schedule of rates must be adopted in compliance with Chapter 2001, Government Code.

(b) The schedule must show the maximum and minimum rates that a burial association may charge per week, per month, per quarter, per six months, and per year, for the definite benefits at the definite ages. The commissioner must designate the ages in convenient groups.

(c) To ensure the adequacy and reasonableness of the rates, the commissioner may consider information gathered from an area of this state that is sufficiently large to include the varying conditions of the risks involved and during a period sufficiently long to ensure that the minimum and maximum rates authorized are:

(1) just and reasonable as they apply to members of the public who become insured under this chapter; and

(2) adequate and non-confiscatory as they apply to the burial associations.

(d) The commissioner may require:

(1) sworn statements from any burial association in this state showing its experience in rates collected and claims paid over a reasonable period; and

(2) any other information the commissioner considers necessary or useful in adopting the rate schedule.

(e) The department shall mail a copy of the adopted rate schedule to each burial association that holds a certificate of authority to engage in the business of insurance in this state. (V.T.I.C. Art. 14.44.)

Source Law

Art. 14.44. The State Board of Insurance shall adopt a schedule of reasonable and adequate rates, giving the maximum and minimum rates which may be charged per week, per month, per quarter, per six (6) months and per annum by burial associations for the definite benefits at the definite ages, which ages will be in convenient groups as designated by said Board. Such schedule of rates shall be adopted in compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). To insure the adequacy and reasonableness of rates the Board may take into consideration experience gathered from a territory within this State sufficiently broad to include the varying conditions of the risks involved and over a period sufficiently long to insure that the minimum and maximum rates determined therefrom shall be just and reasonable as they may apply to the insuring public, and adequate and non-confiscatory as they may apply to the burial associations. The Board is hereby authorized and empowered to require sworn statements from any burial association within this State showing its experience in assessments collected and claims paid over a reasonable period of time and such other information as the Board shall find to be necessary or helpful in making the maximum and minimum rate schedules. After said rate schedules have been adopted, the Board shall cause to be mailed a copy of such rate schedule to each burial association having a permit to do business in Texas.

Revisor's Note

(1) V.T.I.C. Article 14.44 requires that the schedule of rates adopted under that article be adopted in compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The relevant part of that article was codified in 1993 as Chapter 2001, Government Code, and the revised law is drafted accordingly.

(2) V.T.I.C. Article 14.44 refers to "assessments" collected. Throughout this revision, the term "rates" is used instead of "assessments" or "premiums" because, in the context of this revision, "assessments" and "premiums" are included within the meaning of "rates" and "rates" is more commonly used.

Revised Law

Sec. 888.153. NEW OR AMENDED RATE SCHEDULES. (a) At any time the commissioner considers appropriate, the commissioner may adopt:

(1) a new rate schedule for burial associations; or

(2) an amendment to an existing rate schedule.

(b) After the commissioner adopts a new rate schedule or an amendment to an existing rate schedule and sends a copy to the burial associations, each burial association shall use the new or amended rate schedule for individuals who the association subsequently accepts as members. (V.T.I.C. Art. 14.48 (part).)

Source Law

Art. 14.48. . . . at any time it deems proper, it may adopt a new rate schedule or amendment to a previous schedule and when any such amendment or new schedule is adopted, it shall thereafter be considered the official rate schedule of burial associations. When a new or amended schedule is adopted and copies forwarded to the burial associations by the State Board of Insurance, the new or amended rate schedule shall be thereafter used by it as to members thereafter accepted and such procedure shall be followed from time to time, when and as often as the Board shall adopt an amended or new rate schedule for the State.

Revised Law

Sec. 888.154. CONTRACTS WITH EXPERTS AND CONSULTANTS. The department may contract with experts and consultants to assist the department in exercising the department's powers and performing the department's duties under this subchapter. (V.T.I.C. Art. 14.43, Sec. (b) (part).)

Source Law

(b) The State Board of Insurance may contract with experts and consultants to assist it in carrying out its powers, duties, and functions under Articles 14.44, 14.45, 14.47, and 14.48 of this code. . . .

Revisor's Note

(1) Section (b), V.T.I.C. Article 14.43, refers to the "powers, duties, and functions" of the State Board of Insurance. The revised law omits "functions" as included within the meaning of "powers and duties."

(2) Section (b), V.T.I.C. Article 14.43, requires that a contract for a rate expert or consultant be let by competitive bids and awarded to the lowest and best bidder. That section also provides for the State Board of Insurance to adopt rules concerning procedures for soliciting bids and awarding contracts. Section (b) was added to Article 14.43 by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979. The revised law omits those provisions as superceded by Section 2155.063, Government Code, which requires the obtaining of a service by a state agency to be accomplished through competitive bidding, and in Section 2254.003(a), Government Code, which requires the procurement of professional services by a governmental entity, including a state agency, to be accomplished by demonstrated competence and qualifications rather than by competitive bidding.

Section 2155.063, Government Code, was derived from Section 3.10(a), State

Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). Section 3.10(a), Article 601b, was enacted by Chapter 773, Acts of the 66th Legislature, Regular Session, 1979, and subsequently amended by Section 5, Chapter 677, Acts of the 72nd Legislature, Regular Session, 1991. Section 2254.003(a), Government Code, was derived from Section 3, Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes). Section 3, Article 664-4, was enacted by Chapter 38, Acts of the 62nd Legislature, Regular Session, 1971, and subsequently amended by Chapter 1036, Acts of the 71st Legislature, Regular Session, 1989. Those sections are applicable to the commissioner of insurance. The omitted law reads as follows:

(b) . . . Before entering into a contract, the Board shall solicit competitive bids, and the contract shall be awarded to the lowest and best bidder. Procedures for soliciting bids and awarding contracts shall be provided in the rules of the Board.

Revised Law

Sec. 888.155. RETENTION OF BURIAL ASSOCIATION'S INITIAL RATE SCHEDULE. Each burial association shall retain, as part of its permanent records, the initial rate schedule adopted by the association under former Article 14.45, Insurance Code, following the amendment of that article by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979. (V.T.I.C. Art. 14.45 (part).)

Source Law

Art. 14.45. . . . [the other copy returned to the association] to be kept as a part of its permanent files. . . .

Revised Law

Sec. 888.156. CHANGE OF RATES BY BURIAL ASSOCIATION. (a) With the department's consent, a burial association may change its rates by adopting a new rate schedule and filing that schedule with the department.

(b) The new rate schedule must be similar in all respects to the initial schedule adopted by the burial association and each new rate must be not less than the minimum or more than the maximum rate adopted by the commissioner. (V.T.I.C. Art. 14.45

(part).)

Source Law

Art. 14.45. . . . With the consent of the State Board of Insurance an association may change its rates by adopting and filing with the Board, a new rate schedule in all respects similar to the first schedule but in each instance each rate must be within the maximum and minimum as adopted by the State Board of Insurance.

Revised Law

Sec. 888.157. CONTINUATION OF FORMER RATES. (a) A burial association that had rates adopted and in use before June 12, 1947, may continue to apply those rates to individuals who were members of the burial association on that date.

(b) With the department's approval, the burial association may:

(1) change the rates described by Subsection (a); and

(2) make the new rates correspond to the rate schedule most recently filed by the burial association with the department. (V.T.I.C. Art. 14.49.)

Source Law

Art. 14.49. Rates which were adopted and in use by any association prior to June 12, 1947, may be continued to be used by such burial association as to its then members, but with the consent and approval of the Board of Insurance Commissioners of Texas, any association may change such rates and make the same comply and correspond with the rate schedule last filed by such association with the Board of Insurance Commissioners as herein designated.

Revised Law

Sec. 888.158. FAILURE TO COMPLY WITH COMMISSIONER RATE ORDERS. If a burial association refuses to comply with an order of the commissioner regarding rates under this subchapter, the commissioner shall consider the association insolvent. (V.T.I.C. Art. 14.23, Sec. 3.)

Source Law

Sec. 3. When any company or association shall refuse to comply with the order of the State Board of Insurance respecting rates or assessments as in this Chapter authorized, it shall be treated as insolvent.

Revisor's Note
(End of Subchapter)

(1) The revised law omits Section (a), V.T.I.C. Article 14.43. Section (a), V.T.I.C. Article 14.43, requires the State Board of Insurance to assume and exercise the powers, duties, and functions of the Burial Association Rate Board under Articles 14.44-14.52. The Burial Association Rate Board was abolished by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979, effective June 13, 1979, and the requirement in Section (a), Article 14.43, that the State Board of Insurance assume the rate board's powers, duties, and functions is omitted as executed. The omitted law reads as follows:

Art. 14.43. (a) The State Board of Insurance shall assume and exercise the powers, duties, and functions provided by Articles 14.44-14.52 of this code.

(2) The revised law omits the part of V.T.I.C. Article 14.45 relating to the adoption of the initial rate schedule by burial associations and the endorsement of the associations' rates as executed. Article 14.45 was enacted by Chapter 491, Acts of the 52nd Legislature, Regular Session, 1951, adopting the Insurance Code. As amended by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979, Article 14.45 required burial associations to adopt a rate schedule complying with the initial rate schedule adopted by the State Board of Insurance and to file two copies of their rates with the board. As amended, Article 14.45 also required the State Board of Insurance to keep one copy of each burial association's filed rates. The revised law omits that part of V.T.I.C. Article 14.45 as superceded by the subsequent enactment of Subchapter L, Chapter 441, Government Code, relating to maintenance of state records, by Chapter 873, Acts of the 75th Legislature, Regular Session, 1997. The

omitted law reads as follows:

Art. 14.45. After such rate schedule has been so mailed by the State Board of Insurance, it shall be the duty of the officers and directors of each burial association to convene and to adopt a rate schedule to be thereafter used and charged by such association for the different benefits at the different ages and which schedule shall use the same age groups and benefits as is given in the rate schedule so mailed to it by the State Board of Insurance and which rates so adopted shall not be less than the minimum nor more than the maximum rates adopted by the Board. Each burial association shall file with the State Board of Insurance, duplicate copies of the rate schedule adopted by it and which rate schedule must be so filed at least within thirty (30) days from the date the rate schedule was so mailed by the State Board of Insurance. Such copy shall be endorsed by the State Board of Insurance showing the date of its filing and one of such copies shall be retained by the Board and the other copy returned to the association . . . .

[Sections 888.159-888.200 reserved for expansion]

SUBCHAPTER E. PROHIBITIONS

Revised Law

Sec. 888.201. UNAUTHORIZED PROVIDING OF BURIAL OR FUNERAL BENEFITS. An individual, firm, partnership, corporation, or association may not engage in the business of providing burial or funeral benefits payable partly or wholly in merchandise or services unless the individual, firm, partnership, corporation, or association is authorized to engage in that business by this chapter, Chapter 886, Chapter 887, or another law. (V.T.I.C. Art. 14.37 (part).)

Source Law

Art. 14.37. [Any individuals, firms, co-partnerships, corporations or associations doing the business of providing burial or funeral benefits . . . are hereby declared to be burial . . . associations . . . and shall operate under and be governed by Chapter 12 and this chapter.] It shall be unlawful for any individual, individuals, firms, co-partnerships, corporations, or associations, other than those defined above, to engage in the business of providing burial or funeral benefits, which under any circumstances may be paid wholly or partly in merchandise or services.

Revisor's Note

V.T.I.C. Article 14.37 provides that individuals and certain entities defined as burial associations are governed by "Chapter 12 and this chapter." V.T.I.C. Chapters 12 and 14 are revised as this chapter, Chapter 886, and Chapter 887, and the revised law is drafted accordingly. The revised law also adds a reference to "another law" to alert the reader to the fact that laws other than the Insurance Code and this revision govern the business of providing burial or funeral benefits payable in merchandise or services. For example, Chapter 154, Finance Code, "Prepaid Funeral Services," is applicable to and governs, among others, persons selling, accepting money or premiums for, or soliciting contracts for prepaid funeral benefits or contracts or insurance policies to fund prepaid funeral benefits in this state.

Revised Law

Sec. 888.202. RATE VIOLATIONS. (a) A burial association or an officer, agent, or employee of a burial association may not charge or collect any rate from a member of the association other than the rate applicable for the age and benefit stated in the association's rate schedule on file with the department and in force at that time.

(b) An officer, agent, or employee of a burial association commits an offense if the officer, agent, or employee violates Subsection (a).

(c) An officer of a burial association commits an offense if the officer knowingly permits a violation of Subsection (a).

(d) An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $200.

(e) The department may revoke the certificate of authority of a burial association that violates this section. (V.T.I.C. Art. 14.46.)

Source Law

Art. 14.46. It shall be unlawful for any burial association, its officers, agents, or employees to charge, receive, or collect any rate, premium, or assessment from any member of said association other than the rate, premium, or assessment applicable for the age and benefit as named in said association's rate schedule on file with the Board of Insurance Commissioners and in force at that time. Any officer, agent, or employee of any burial association who charges, receives, or collects any premium or assessment in violation of this article, or any officer, of any burial association who knowingly permits it to be done, shall be guilty of misdemeanor and upon conviction shall be fined not less than Fifty ($50.00) Dollars nor more than Two Hundred ($200.00) Dollars. The Board of Insurance Commissioners may cancel the permit of any burial association violating the provisions of this article.

Revisor's Note

(1) V.T.I.C. Article 14.46 provides that a burial association or others may not "charge, receive, or collect" an unauthorized "rate, premium, or assessment." The revised law omits "receive" as included within the meaning of "charge or collect."

(2) V.T.I.C. Article 14.46 states that the Board of Insurance Commissioners "may cancel" the permit of any burial association in certain circumstances. The revised law substitutes "revoke" for "cancel" because, in context, the terms are synonymous and "revoke" is more frequently used.

Revised Law

Sec. 888.203. CONNECTION BETWEEN BURIAL ASSOCIATIONS. (a) A burial association may not be directly or indirectly connected with another burial association.

(b) A member, director, or officer of a burial association may not be a member, director, or officer of another burial association.

(c) A person whose spouse or employee is an officer or director of a burial association may not be an officer or director of another burial association.

(d) A funeral director or funeral home directly or indirectly connected with a burial association or designated by a burial association as its funeral director or funeral home may not be:

(1) connected in any manner with another burial association; or

(2) designated by another burial association as its funeral director or funeral home to:

(A) provide its members with services or merchandise; or

(B) service its policies. (V.T.I.C. Art. 14.50.)

Source Law

Art. 14.50. There shall be no connection directly or indirectly between two (2) or more burial associations. No member, director, or officer of one burial association shall be a member, director, or officer of any other burial association. No person whose husband, wife, or employee is an officer or director of one burial association shall be an officer or director of any other burial association. No funeral director, undertaker, or funeral home directly or indirectly connected with or designated by one burial association as its funeral director, undertaker, or funeral home shall be connected with or designated by any other burial association as its funeral director, undertaker, or funeral home to furnish its members with its services and/or merchandise or to service its policies or to be in any manner connected with its affairs.

Revisor's Note

V.T.I.C. Article 14.50 refers to a "funeral director, undertaker, or funeral home." The revised law omits the reference to "undertaker" as included within the meaning of "funeral director."

Revised Law

Sec. 888.204. CERTAIN AFFILIATIONS BETWEEN BURIAL ASSOCIATIONS AND FUNERAL HOMES PROHIBITED. (a) It is against the public policy of this state for a funeral home or an owner of an interest in a funeral home to be directly or indirectly connected or affiliated with more than one burial association.

(b) The commissioner shall adopt rules as necessary to implement this section. (V.T.I.C. Art. 14.51 (part).)

Source Law

Art. 14.51. It is against the public

policy of this State for a funeral home or for those who own it in whole or in part to be connected directly or indirectly or affiliated with more than one burial association and . . . the State Board of Insurance shall make such rules and regulations as may be necessary to carry out the spirit and purpose of this article.

Revised Law

Sec. 888.205. VIOLATION OF CHAPTER; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of a burial association, or other person commits an offense if the person violates a provision of this chapter other than Section 888.202.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine not to exceed $500;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement. (V.T.I.C. Art. 14.59 (part).)

Source Law

Art. 14.59. If any director, officer, agent, employee or attorney at law or attorney in fact of any association under this chapter, or any other person, shall violate any of the provisions of this chapter not specifically set out in Articles . . . 14.46 of this chapter, he shall be punished by fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Revisor's Note

(End of Subchapter)

The revised law omits V.T.I.C. Article 14.37-1. Article 14.37-1 was transferred, without change, from Article 580a, Vernon's Texas Penal Code (1925), by authority of Section 5, Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, which enacted the current Penal Code. Article 14.37-1 has not been subsequently amended. The revised law omits Article 14.37-1 because

Article 580a, V.T.P.C., was held unconstitutional. Phillips v. State, 125 S.W.2d 585 (Tex. Crim. App. 1939). The omitted law reads as follows:

Art. 14.37-1

Sec. 1. It shall hereafter be unlawful for any person, corporation, insurance company, fraternal organization, burial association or other association to write, sell or issue any certificate, policy, contract or membership, maturing upon the death of the person holding the same or upon the death of some member of the holder's family, if such certificate, policy, contract or membership provides that it is to be paid or settled, or if the plan of such person, corporation, organization or association provides that its certificates, policies, contracts or memberships are to be paid or settled, in merchandise or services rendered, or agreed to be rendered, or by furnishing burial materials or burial services, or in discounts on the regular prices of merchandise, burial materials or funeral services or other services; or if such certificate, policy, contract or membership is to be paid at maturity in anything except money.

Sec. 2. Any person, corporation, insurance company, fraternal organization, burial association or other association which shall hereafter write, sell or issue any certificate, policy, contract, or membership prohibited by the foregoing section of this Act shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than Ten Dollars ($10.00) nor more than Two Hundred Fifty Dollars ($250.00), each sale of any such policy, contract or membership shall constitute a separate offense.

[Chapters 889-910 reserved for expansion]

SUBTITLE F. FARM AND COUNTY MUTUAL INSURANCE COMPANIES

CHAPTER 911. FARM MUTUAL INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

SUBCHAPTER B. ORGANIZATION OF FARM MUTUAL INSURANCE COMPANY; DIRECTORS

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

SUBCHAPTER D. POLICIES AND COVERAGE

CHAPTER 911. FARM MUTUAL INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 911.001. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICABILITY OF CERTAIN LAWS. (a) A provision of this code, other than this chapter, does not apply to a farm mutual insurance company holding a certificate of authority under this chapter unless farm mutual insurance companies are expressly mentioned in the other law.

(b) A law enacted after May 20, 1973, does not apply to a farm mutual insurance company unless the law states that it applies to a farm mutual insurance company.

(c) Except to the extent of any conflict with this chapter, the following provisions apply to a farm mutual insurance company:

(1) Subchapter A, Chapter 32;

(2) Subchapter D, Chapter 36;

(3) Sections 31.002(2), 32.021(c), 32.023, 32.041, 33.002, 38.001, 81.001-81.004, 801.051-801.055, 801.057, 801.101, 801.102, 822.204, 841.004, 841.251, 841.252, and 862.101;

(4) Chapter 802;

(5) Subchapter A, Chapter 805;

(6) Chapter 824; and

(7) Sections 2, 5, 6, and 17, Article 1.10, and Articles 1.09-1, 1.11, 1.12, 1.13, 1.15, 1.15A, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 2.10, 21.21, 21.28, 21.28-A, 21.28-C, 21.39, and 21.39-A.

(d) After hearing, the commissioner may adopt rules regarding the application of a law referred to in Subsection (c) to farm mutual insurance companies. The department may enforce rules adopted under this subsection. (V.T.I.C. Arts. 16.24, 16.27 (part).)

Source Law

Art. 16.24. (a) Unless farm mutual insurance companies are expressly mentioned, no provision of the Insurance Code, except as contained in this chapter, shall be applicable to insurers holding a certificate of authority under this chapter and no law hereinafter enacted shall apply to such companies unless such subsequent enactment states that it shall apply.

(b) Regardless of the preceding portion of this Article, Articles 1.01, 1.02, 1.04, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.15A, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.29, 2.08, 2.10, 3.12, 3.13, 6.16, 21.21, 21.25, 21.28, 21.28-A, 21.28-C, 21.39, 21.39-A, and Sections 10(a), (b) and (c) of Article 3.01 and Sections 1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14 and 17 of Article 1.10 of this code shall apply to and govern farm mutual insurance companies except where such Articles or portions thereof are in conflict with the provisions of Chapter 16 of the Insurance Code.

Art. 16.27. The State Board of Insurance is hereby vested with power and authority under this Act to promulgate, after public hearing, and enforce rules and regulations concerning the application to farm mutual insurance companies of the Articles referred to in Article 16.24 of the Insurance Code and . . . .

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 16.24, refers to "insurers" holding a certificate of authority under this chapter. The revised law substitutes "farm mutual insurance company" for "insurers" because a farm mutual insurance company is the only type of insurer that holds a certificate of authority under this chapter.

(2) Subsection (a), V.T.I.C. Article 16.24, refers to a law "hereinafter enacted." That provision was enacted by Chapter 139, Acts of the 63rd Legislature, Regular Session, 1973, which took effect May 21, 1973. The revised law is drafted accordingly.

(3) Subsection (b), V.T.I.C. Article 16.24, provides that "Articles 1.01, 1.02, . . . [and] 1.09" of the Insurance Code apply to a farm mutual insurance company. Articles 1.02 and 1.09 have been revised in Chapters 31 and 33 of this code. The revised law omits the reference to Article 1.01 because that article provides the short title for the Insurance Code and will apply to this revised chapter by its own terms without the necessity of a reference in this chapter. The revised law omits the references to Article 1.02 and to Article 1.09, except to the extent that article is revised in Section 33.002 of this code, because the substance of the omitted provisions relates only to the internal operations of the commissioner of insurance and the Texas Department of Insurance and has no application to farm mutual insurance companies.

(4) Subsection (b), V.T.I.C. Article 16.24, refers to V.T.I.C. Article 1.23. The revised law omits the reference because V.T.I.C. Article 1.23 was repealed by Chapter 101, Acts of the 76th Legislature, Regular Session, 1999, as duplicative of Rules 902(1) and (4), Texas Rules of Civil Evidence, and Rules 902(1) and (4), Texas Rules of Criminal Evidence.

(5) Subsection (b), V.T.I.C. Article 16.24, provides that a farm mutual insurance company is subject to "Section[s] . . . 7 . . . of Article 1.10" of the Insurance Code, which was codified in 1999 in part as Section 82.002 of this code. The revised law omits that provision as unnecessary because Section 82.002 applies by its own terms to a farm mutual insurance company.

(6) V.T.I.C. Article 16.24 states that certain laws "apply to and govern" farm mutual insurance companies. Throughout this

chapter, the revised law omits references to "govern" in this context because "govern" is included within the meaning of "apply to."

(7) V.T.I.C. Article 16.27 refers to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the board have been changed appropriately.

(8) V.T.I.C. Article 16.27 provides that the State Board of Insurance (now the Texas Department of Insurance) may "promulgate . . . rules and regulations." Throughout this chapter, the revised law substitutes "adopt" for references to "promulgate" because the terms are synonymous and the former is more commonly used. In addition, the revised law omits references to "regulations" in this section and in similar contexts throughout this chapter because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 911.002. GENERAL RULEMAKING AUTHORITY; ENFORCEMENT. After hearing, the commissioner may adopt rules to clarify and augment this chapter as determined by the commissioner to be necessary to accomplish the purposes of this chapter. The department may enforce rules adopted under this section. (V.T.I.C. Art. 16.27 (part).)

Source Law

Art. 16.27. The State Board of Insurance is hereby vested with power and authority under this Act to promulgate, after public hearing, and enforce rules and regulations . . . for the clarification, amplification and augmentation of the terms and provisions of Chapter 16 of the Insurance Code (as it now exists or as it may be amended in the future) which in the discretion of said Board are deemed necessary to accomplish the purposes of this Act.

Revisor's Note

(1) V.T.I.C. Article 16.27 refers to a "public hearing" of the former State Board of Insurance. Throughout this chapter, the revised law omits "public" as unnecessary. In context, "hearing" means a hearing open to the public.

(2) V.T.I.C. Article 16.27 authorizes the State Board of Insurance (now the Texas Department of Insurance) to adopt rules for the "clarification, amplification and augmentation" of V.T.I.C. Chapter 16, revised as this chapter. The revised law omits "amplification" because "amplification" is included within the meaning of "augmentation."

Revised Law

Sec. 911.003. FEES. (a) The department shall charge and collect the following fees:

(1) $10 for an amendment to a farm mutual insurance company's charter; and

(2) $1 for the issuance of a company's certificate of authority.

(b) The department shall charge and the comptroller shall collect a fee of $20 for the filing of an annual statement required by the department. (V.T.I.C. Art. 16.22, Subsecs. (a) (part), (b).)

Source Law

Art. 16.22. (a) [For the renewal and extension of the granting of any charter, the department shall charge and collect a filing fee of Ten ($10.00) Dollars] and a like amount for any amendment to the charter of any such company.

(b) The department shall charge and collect a fee of One ($1.00) Dollar for the issuance of a certificate of authority or renewal thereof to all companies operating under this chapter. The department shall charge a filing fee of Twenty ($20.00) Dollars for filing an annual statement required by the department. The comptroller shall collect the annual statement filing fee.

Revisor's Note

V.T.I.C. Article 16.22 provides that the Texas Department of Insurance shall charge and collect "a fee of One ($1.00) Dollar for the issuance of a certificate of authority or renewal thereof." The revised law omits the reference to the renewal of a certificate of authority as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is revoked, canceled, or suspended. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . to the extent that they require periodic renewal of certificates of authority."

Revisor's Note

(End of Subchapter)

(1) V.T.I.C. Article 16.21, in part, provides that certain fire and storm mutual insurance companies "shall become subject to . . . this chapter" on May 21, 1973, and that those companies may take certain actions required to comply with this chapter. The revised law omits that part of Article 16.21 as executed. The omitted law reads:

Art. 16.21. . . .

Such fire or storm mutual insurance companies as included in this article, heretofore operating under the now repealed provisions of 4860a-20, Revised Civil Statutes of Texas, shall become subject to the provisions and requirements of this chapter in lieu of any act heretofore governing such companies. Any such company shall have the right to change its name so as to include the words "Farm Mutual" or "Farmers Mutual," and may amend its constitution and by-laws and/or charter for the purpose of adopting any provision or meeting any requirement of this chapter. The Board shall charge and collect a filing fee of Ten ($10.00) Dollars for each amendment to the charter of any such company.

(2) V.T.I.C. Article 16.26 provides that V.T.I.C. Chapter 16, revised as this chapter, does not apply to the extent it cannot under the United States Constitution or the Texas Constitution. The revised law omits the reference to the federal constitution as unnecessary because under the Supremacy Clause of the United States Constitution (Clause 2, Article VI), federal law always takes precedence over a state statute. The revised law also omits the reference to the Texas Constitution as unnecessary because the state cannot modify constitutional requirements by statute. The omitted law reads:

Art. 16.26. This chapter and law do not apply to any insurer or other person to any extent that it cannot validly apply under the Constitution of the United States or the Constitution of the State of Texas.

[Sections 911.004-911.050 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF FARM MUTUAL INSURANCE COMPANY; DIRECTORS

Revised Law

Sec. 911.051. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. Except to the extent of any conflict with this chapter, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a farm mutual insurance company. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to farm mutual insurance companies. (V.T.I.C. Art. 16.23.)

Source Law

Art. 16.23. Insofar as the same are not inconsistent with or contrary to any applicable provision of this chapter as it now exists or may be amended in the future, the provisions of the Texas Non-Profit Corporation Act shall apply to and govern farm mutual insurance companies, provided, however, that wherever said Texas Non-Profit Corporation Act imposes some duty, authority, responsibility, power; or some act is vested in, required of, or is to be performed by the Secretary of State, such is hereby vested in, required of, or shall be performed by the State Board of Insurance.

Revisor's Note

(1) V.T.I.C. Article 16.23 refers to V.T.I.C. Chapter 16, revised as this chapter, "as it now exists or may be amended in the future." The revised law omits the quoted language in this section and omits similar language throughout this chapter as unnecessary because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(2) V.T.I.C. Article 16.23 states that the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) shall "apply to and govern" farm mutual insurance companies. The revised law omits the reference to "govern" because, in context, "govern" is included within the meaning of "apply to."

(3) V.T.I.C. Article 16.23 refers to a "duty, authority, responsibility, [or] power" of the secretary of state and State Board of Insurance. The revised law substitutes "power and duty" for the quoted phrase because "responsibility" is included within the meaning of "duty" and "authority" is included within the meaning of "power."

(4) V.T.I.C. Article 16.23 refers to an act that is "vested in, required of, or is to be performed by" the secretary of state and State Board of Insurance. The revised law omits the references to "vested in" and "required of" because, in context, these phrases are included within the meaning of the phrase "to be performed by."

Revised Law

Sec. 911.052. FORMATION OF COMPANY: INCORPORATION REQUIRED. To form a farm mutual insurance company, an association of individuals that does not hold a certificate of authority issued by the department must obtain a charter as required by this subchapter. (V.T.I.C. Art. 16.03, Subsec. (b) (part); Art. 16.06 (part).)

Source Law

[Art. 16.03]

(b) Any association of individuals which has not prior to the effective date of this Act been issued a certificate of authority by the State Board of Insurance will be required to secure a charter in compliance with Articles 16.04, 16.05 and 16.06 of the Insurance Code dealing with incorporation of companies not heretofore issued such a certificate of authority, and . . . .

Art. 16.06. . . .

(b) . . . All companies organized after the effective date of this Act under this Chapter must have received a charter to operate and . . . .

Revisor's Note

Subsection (b), V.T.I.C. Article 16.03, requires an association of individuals that has not been issued a certificate of authority "prior to the effective date of this Act" to incorporate as a condition to forming a farm mutual insurance company. Throughout this chapter, the revised law omits language referring to the issuance of a certificate of authority before the effective date of the act as unnecessary because the incorporation requirement applies to all newly formed farm mutual insurance companies, and a newly formed company will not have a certificate of authority issued before the specified date.

Revised Law

Sec. 911.053. INCORPORATION REQUIREMENTS. (a) In this section, "separate risk" means one or more items of real property and the property's contents, if any, that is not exposed to any other property on which insurance is applied for in the association seeking the charter.

(b) To be granted a charter as a farm mutual insurance company, an association must:

(1) demonstrate that the association:

(A) has existed as an association of individuals for at least three years;

(B) has at least 100 individual members;

(C) operates for the purpose of membership recreation or welfare under a system of subordinate lodges, locals, or districts;

(D) does not have capital stock;

(E) is organized and operates solely for the mutual benefit of its members and not for profit;

(F) has a representative form of government; and

(G) has decided by a majority vote of the association's members to apply for a charter as a farm mutual insurance company under this chapter; and

(2) have:

(A) at least 100 written applications for insurance on at least 400 separate risks; and

(B) an unencumbered surplus as required by Section 911.308(b).

(c) Coverage for a risk described by Subsection (b)(2)(A) may not be in an amount that exceeds one percent of the total amount of insurance coverage to be issued by the association as stated in its application for a charter. (V.T.I.C. Art. 16.03, Subsec. (b) (part); Art. 16.06 (part).)

Source Law

[Art. 16.03]

(b) [Any association of individuals which has not prior to the effective date of this Act been issued a certificate of authority] . . . must show that it has theretofore been in existence as a bona fide association of individuals for a period of not less than three years, containing a membership of not less than 100 persons, operating under a system of subordinate lodges, or locals, or districts, without capital stock, organized and carried on solely for the mutual benefit of its members, and not for profit, having a representative form of government, operating for the purpose of membership recreation or membership welfare, and who now have by a majority vote of said association decided to apply for a charter as a farm mutual insurance company under the provisions of this Chapter 16.

Art. 16.06. Before a charter shall be granted a farm mutual insurance company not heretofore holding a certificate of authority from the State Board of Insurance, the incorporators must have on hand:

(a) Not less than one hundred (100) applications in writing for insurance on not less than four hundred (400) separate risks; provided that no one (1) risk shall be for more than one (1%) per cent of the total amount of insurance applied for in the new company, and that a separate risk shall be one (1) or more items of real estate and its contents, if any, which is not exposed to any other property on which insurance is applied for in the new company;

(b) The free surplus required herein . . . . [All companies organized after the effective date of this Act under this Chapter must have received a charter to operate and] shall at time of incorporation and [at all times thereafter have free surplus equal to $2.00 for each $100.00 of insurance in force, or $200,000.00 whichever amount is greater invested as provided in Article 2.08 of this Code as now provided or as amended in the future. . . .]

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 16.03, refers to a "bona fide" association. Throughout this chapter the revised law omits references to "bona fide" as unnecessary in this context because it does not add to the clear meaning of the law.

(2) Subsection (b), V.T.I.C. Article 16.06, requires that a farm mutual insurance company maintain "free surplus." Throughout this chapter, the revised law substitutes "unencumbered surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

Revised Law

Sec. 911.054. CHARTER AND ARTICLES OF INCORPORATION. (a) The charter and articles of incorporation of an association that wants to form a farm mutual insurance company must state the names and post office addresses of at least 25 charter members of the company, all of whom are residents of one or more adjoining counties in this state and each of whom must:

(1) be a member of the association;

(2) own at least $5,000 of insurable property for which the member has applied in writing for insurance coverage from the company to be formed; and

(3) sign the charter and articles of incorporation.

(b) In addition to the requirements of Subsection (a), the charter must:

(1) be acknowledged before a notary public by at least five of the charter members described by Subsection (a);

(2) state:

(A) the name of the company, which must include the words "Farm Mutual" or "Farmers Mutual";

(B) the location of the company's principal office;

(C) the number, names, and post office addresses of each of the company's first directors, of which there must be at least five; and

(D) the type of property the company will insure and the risk to be insured against; and

(3) include any other provision the incorporators want consistent with this chapter. (V.T.I.C. Art. 16.01, Subsec. (c) (part); Art. 16.04.)

<u>Source Law</u>

[Art. 16.01]

(c) Each farm mutual insurance company shall include the words "Farm Mutual" or "Farmers Mutual" in its name, and . . . .

Art. 16.04. The charter and articles of incorporation of a farm mutual or farmers mutual insurance company not holding a certificate of authority on the effective date of this Act shall state the names and post office addresses and be signed by not less than twenty-five (25) of its charter members, all of whom must be bona fide inhabitants in any one or more adjoining counties in this state, owning each not less than $5,000.00 of insurable property, and have applied in writing for insurance thereon in the company to be formed, and which charter is to be acknowledged before a notary public by not less than five (5) of them and all charter members are members of an association as described in Article 16.03(b).

It shall state the name of the company which shall include the words "Farm Mutual" or "Farmers Mutual," the place of its principal office, the number, names and post office addresses of its first directors, who shall not be less than five (5), the kind of property it will insure, and the risk to be insured against; and such other provisions as the incorporators may desire to set out therein in keeping with this chapter.

Revised Law

Sec. 911.055. APPLICATION FOR PERMIT TO SOLICIT INSURANCE. (a) At least 10 residents described by Section 911.054(a) that want to form a farm mutual insurance company may apply to the department for a permit to solicit insurance on the mutual or cooperative plan.

(b) The application for a permit to solicit insurance must:

(1) state:

(A) that at least 100 individuals are members of an association described by Section 911.053(b)(1);

(B) that the association has indicated, by majority vote, that the association wants to:

(i) insure property of the association's members under this chapter; and

(ii) be chartered as a farm mutual insurance company;

(C) the name of the company, which must include the words "Farm Mutual" or "Farmers Mutual";

(D) the location of the company's principal office;

(E) the risks the company proposes to insure; and

(F) the names and places of residence of at least 10 of the applicants; and

(2) be accompanied by:

(A) affidavits of at least two of the applicants, each of whom must:

(i) state the applicant's name and residence; and

(ii) verify the facts stated in the application; and

(B) a filing fee in the amount of $25. (V.T.I.C. Art. 16.05 (part).)

Source Law

Art. 16.05. Any ten (10) or more of such inhabitants, desiring to form a farm mutual insurance company, may apply to the State Board of Insurance for permission to solicit insurance on the mutual or cooperative plan, which application shall state:

(a) That not less than one hundred (100) individuals have heretofore been members of an association as described in Article 16.03(b) and said association has by majority vote indicated its desire to insure property of its members under Chapter 16 of the Insurance Code and for said association to be chartered as a farm mutual insurance company;

(b) The name of the company shall include the words "Farm Mutual" or "Farmers Mutual;"

(c) The locality of the principal business office of such company;

(d) The risks the company proposes to insure;

(e) The names and places of residence of not less than ten (10) persons making such application;

(f) An affidavit of at least two (2) of such applicants correctly stating the names and residences of such applicants and verifying the facts stated in the application.

[Upon receipt of such application,] together with a Twenty-five ($25.00) Dollar fee for filing same, [the State Board of Insurance . . . .]

Revisor's Note

(1) V.T.I.C. Article 16.05 refers to an affidavit that "correctly" states certain information. The revised law omits "correctly" as unnecessary because a person who executes an affidavit under oath is required to state the information correctly.

(2) V.T.I.C. Article 16.05 states that certain persons may apply to the department of insurance for "permission" to solicit insurance. Throughout this chapter, the revised law substitutes "permit" for "permission" in this context to provide for consistent use of terminology in this code.

Revised Law

Sec. 911.056. ISSUANCE OF PERMIT TO SOLICIT INSURANCE; TERM. (a) On receipt of an application for a permit to solicit insurance under Section 911.055, the department shall examine the application. If the department finds that the application complies with this chapter, the department shall issue to the applicants a permit to solicit insurance.

(b) A permit issued under this section authorizes the permit holders to solicit insurance on the mutual or cooperative plan in accordance with the terms of the application. The permit does not authorize the permit holders to:

(1) issue insurance policies; or

(2) pay losses.

(c) A permit issued under this section is valid for six months. On receipt of an application for renewal and a fee in the amount of $10, the department may renew a permit issued under Section 911.055 as frequently and for the period as the department determines necessary. (V.T.I.C. Art. 16.05 (part).)

Source Law

Art. 16.05. . . .

Upon receipt of such application, . . . the State Board of Insurance shall examine it and upon finding that it complies with this chapter shall issue a permit for a period of six (6) months, authorizing said applicants to solicit insurance on the mutual or cooperative plan in accordance with the terms of the application, but not to issue policies of insurance or pay losses. Such permit may be renewed as often and as long as the State Board of Insurance finds it necessary upon application therefor and upon the payment of Ten ($10.00) Dollars for each renewal. . . .

Revisor's Note

V.T.I.C. Article 16.05 refers to the issuance of a permit "authorizing . . . applicants to solicit [certain] insurance . . . ." The revised law substitutes "permit holders" for "applicants" because an applicant to whom the Texas Department of Insurance has issued a permit is no longer an applicant, but is a permit holder.

Revised Law

Sec. 911.057. COLLECTION AND REFUND OF MONEY FROM CERTAIN INDIVIDUALS APPLYING FOR INSURANCE. An association described by Section 911.053(b)(1) of which the applicants for a permit to solicit insurance are members shall hold in trust money collected from an individual applying for insurance in the association until the association is incorporated. If the association's incorporation is not perfected, the association shall refund the money to the individual applying for the insurance. (V.T.I.C. Art. 16.05 (part).)

Source Law

Art. 16.05. . . .

. . . Moneys collected from applicants for insurance shall be held in trust for them until incorporation and returned in the event the organization is not perfected.

Revised Law

Sec. 911.058. MEMBERSHIP CONTROL OF COMPANY. (a) The control of a farm mutual insurance company must be ultimately vested as provided by this chapter in the company's members through a supreme legislative or governing body, the members of which must be elected directly by the company's members or by delegates elected by the company's members.

(b) Through the company's governing body, the company's members may establish local chapters, branches, lodges, or similar organizations.

(c) The methods provided by this section for the control of a farm mutual insurance company are exclusive. (V.T.I.C. Art. 16.01, Subsec. (d).)

Source Law

(d) A characteristic of a farm mutual insurance company as defined by Section (a) of this article is that control must be ultimately vested in the membership as provided by this article, and that control by its members through a supreme legislative or governing body whose members are elected directly by the members or by delegates elected by the members. Through this governing body the members may also establish local chapters, branches, lodges, or similar organizations. The methods provided by this section for exercising control over a farm mutual insurance company are exclusive.

Revised Law

Sec. 911.059. ELIGIBILITY OF BOARD OF DIRECTORS; TERM. (a) An individual is eligible to serve as a director of a farm mutual insurance company if the individual is a policyholder who maintains insurance coverage in the amount of at least $3,000 written by the company on the individual's property.

(b) Except as otherwise provided by the company's bylaws or constitution, a director serves for a term of one year or until the director's successor qualifies for office. (V.T.I.C. Art. 16.12.)

Source Law

Art. 16.12. Directors of farm mutual insurance companies shall hold their office for one (1) year after their election, and until their successors qualify, unless otherwise provided in their constitution and by-laws.

Only bona fide policyholders who carry insurance on their property in an amount not less than Three Thousand ($3,000.00) Dollars each in a company, shall be eligible to become or remain directors of the same. When a director reduces his said insurance below such amount, he shall no longer be qualified to act as such director.

Revised Law

Sec. 911.060. GENERAL POWERS OF BOARD OF DIRECTORS. The board of directors of a farm mutual insurance company has the powers provided by:

(1) this chapter; and

(2) the company's charter, constitution, and bylaws to the extent those powers do not conflict with this chapter. (V.T.I.C. Art. 16.14.)

Source Law

Art. 16.14. The Board of Directors of farm mutual insurance companies shall have all powers granted by Chapter 16, and those granted by the charter, constitution and by-laws if not in conflict with the provisions of this Chapter 16.

Revised Law

Sec. 911.061. AUTHORITY TO BORROW MONEY. (a) The board of directors of a farm mutual insurance company, acting through its authorized officers, may borrow money in an amount determined to be necessary to pay the company's accrued or unaccrued losses.

(b) The board may pledge as security for a loan the assets of the company, including the contingent liability of its policyholders. (V.T.I.C. Art. 16.13.)

Source Law

Art. 16.13. The Board of Directors of farm mutual insurance companies may, acting by and through its duly authorized officers, at any time, borrow such sum or sums of money as they shall deem necessary to pay its losses, accrued or unaccrued, and may pledge the assets of the company including the contingent liability of the policyholders for such losses as security for such loans.

Revised Law

Sec. 911.062. REMOVAL OF OFFICER OR DIRECTOR. (a) The board of directors of a farm mutual insurance company, at a meeting, may remove an officer or director of the company if, by a two-thirds majority vote of all the company's directors, the board determines that the removal of the individual is in the best interest of the company. The board may remove an officer or director under this subsection without stating a reason for the removal.

(b) The board may appoint one or more individuals to assume the duties and serve the unexpired term of an officer or director removed under this section. (V.T.I.C. Art. 16.16.)

Source Law

Art. 16.16. The Board of Directors of a company may at any time, in any meeting by a two-thirds (2/3) majority vote of all the directors, remove any officer or director of the company from his office without assigning any reason therefor, and name another person or persons to assume the duties of the one or ones removed, and to fill any unexpired term, when, in their judgment, it shall be deemed to the best interest of the company.

Revised Law

Sec. 911.063. CREATION OF LOCAL CHAPTERS AND DISTRICTS. (a) A farm mutual insurance company's bylaws may provide for:

(1) the organization of local chapters to transact the company's business; and

(2) the creation of districts in and for which directors may be elected.

(b) The bylaws may also provide that delegates from the company's local chapters are the company's supreme governing body.

(c) The company may consider the hazards against which the company insures and the company's classes of risks and territory of operation in organizing the local chapters and creating the districts. (V.T.I.C. Art. 16.08, Subsec. (f).)

Source Law

(f) The by-laws of farm mutual insurance companies may provide for the organization of local chapters for the transaction of their business and for the creation of districts in and for which their directors may be elected. The by-laws may also provide that delegates from local chapters constitute the supreme governing body of the company. In the organization of local chapters, and the creation of the districts, the hazards insured against, and the classes of risks, as well as the territory of operation, may be taken into consideration.

Revised Law

Sec. 911.064. POLICYHOLDER MEETINGS. (a) A farm mutual insurance company shall hold a policyholder meeting to elect directors and transact business at the time and place and in the manner prescribed by the company's bylaws.

(b) A special meeting of a company's policyholders may be called by:

(1) the president, the general manager, or one-third of the company's directors; or

(2) the commissioner. (V.T.I.C. Art. 16.08, Subsec. (g) (part).)

Source Law

(g) The meetings of the policyholders of farm mutual insurance companies shall be held at such time or times, in such place or places, and in such manner for the purpose of electing directors and transacting any business coming before them as prescribed in their by-laws.

Special meetings may be held upon the call of the President, the General Manager, one-third (1/3) of the Directors of the Company, or the State Board of Insurance.

. . .

Revised Law

Sec. 911.065. VOTING BY POLICYHOLDER. (a) Each policyholder of a farm mutual insurance company is entitled to only one vote at a policyholders' meeting.

(b) A policyholder may not vote by proxy. (V.T.I.C.

Art. 16.08, Subsec. (g) (part).)

Source Law

(g) . . .

Each policyholder in a farm mutual insurance company shall be entitled to only one vote in all policyholders' meetings.

No voting by proxy shall be permitted.

Revised Law

Sec. 911.066. AUTHORITY TO PROHIBIT WAIVER OF BYLAWS. A farm mutual insurance company may provide in its bylaws that a company adjuster, representative appointed by the company, or local chapter or officer or agent elected by the local chapter may not waive a provision in the company's constitution or bylaws or in a policy issued by the company. (V.T.I.C. Art. 16.09.)

Source Law

Art. 16.09. Such companies may provide in their by-laws that local chapters, and the officers and agents elected by such local chapters, company adjusters or appointed representatives, do not have the power to waive any provision of the constitution, by-laws or policy.

Revised Law

Sec. 911.067. APPLICATION FOR EXTENSION OF CHARTER FOR CERTAIN COMPANIES; TERM. (a) Before a farm mutual insurance company's charter expires, the company may apply to the department for an extension of the company's charter if:

(1) the company was chartered, holding a certificate of authority, and operating before May 21, 1973, under Chapter 16, Insurance Code, as it existed on that date; or

(2) the company was organized and engaging in business before April 6, 1937, and the company continues to engage in business.

(b) A farm mutual insurance company described by Subsection (a) and whose charter has expired may apply to the department to have the charter extended perpetually if the company is engaged in business in this state.

(c) The term of the charter begins on the date that the charter is extended or, if the original charter expired before the charter is extended, the date the original charter expired.

(d) An application for an extension must be authorized by either a two-thirds majority vote of the company's directors or by a simple majority vote of those voting at a policyholders' meeting and must:

(1) state in full the charter to be extended;

(2) state the period for which the charter is to be extended; and

(3) be signed and acknowledged by the president and secretary of the company.

(e) A company whose charter is extended retains the rights, privileges, and immunities granted the company under the company's original charter.

(f) The department shall charge and collect a fee of $10 for the extension of a farm mutual insurance company's charter. (V.T.I.C. Art. 16.03, Subsec. (a) (part); Art. 16.21 (part); Art. 16.22, Subsec. (a) (part).)

Source Law

Art. 16.03. (a) Farm mutual companies now chartered and duly operating under Chapter 16, Insurance Code, and having heretofore issued to them a certificate of authority by the State Board of Insurance may renew their charters as provided in Article 16.21 of this chapter.

. . .

Art. 16.21. Any farm mutual insurance company, organized and in business prior to April 6, 1937, and still in business, may at any time before its charter expires by lapse of time, have its charter extended perpetually, and shall, under the extended charter, continue to have and enjoy all the rights, privileges and immunities that it had under the original charter; provided, however, that it is first authorized to extend its said charter either by a two-thirds majority vote of all of its directors, or by a simple majority vote of those voting at a meeting of its policyholders. The application for such extensions shall set out in haec verbae the charter to be extended and it shall state the time to which it is to be extended and be signed and acknowledged by the president and secretary of the company.

Any such company whose charter has expired or may hereafter expire by lapse of time, but is or shall be still doing business in this State, may have its charter renewed for a perpetual term from the time of the expiration of the former existing charter in like manner as charters may be extended as provided in the paragraph preceding, and from the time of such renewal it shall be entitled to all the rights, privileges and immunities it had and enjoyed under the prior existing charter.

. . .

Art. 16.22. (a) For the renewal and extension of the granting of any charter, the department shall charge and collect a filing fee of Ten ($10.00) Dollars . . . .

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 16.03, refers to farm mutual insurance companies "now chartered." That provision was enacted by Chapter 139, Acts of the 63rd Legislature, Regular Session, 1973, which took effect May 21, 1973. The revised law substitutes that date for the quoted language.

(2) Subsection (a), V.T.I.C. Article 16.03, provides that a farm mutual insurance company may "renew" the company's charter. The revised law substitutes "extend" for "renew" because, according to the Texas Department of Insurance, "extension" and "renewal" of a farm mutual insurance company's charter are synonymous. Throughout this chapter, comparable changes have been made to ensure consistent use of terminology.

(3) V.T.I.C. Article 16.21 requires that an application for an extension of a farm mutual insurance company's charter "set out in haec verbae the charter to be extended." The revised law substitutes "in full" for "in haec verbae" because it is clear from the context that the charter must be set out "in full" and that term is more commonly used.

Revisor's Note

(End of Subchapter)

V.T.I.C. Article 16.03, in part, and Article 16.21, in part, provide procedures by which certain unincorporated farm mutual insurance companies may apply for a charter not later than May 21, 1976. The revised law omits those provisions as executed. The omitted law reads:

Art. 16.03. (a) . . .

Those farm mutual companies or associations now operating under a certificate of authority issued by the State Board of Insurance which were organized and operating prior to April 6, 1937, but not yet incorporated, shall be granted a charter as provided in Article 16.21 of the Insurance Code if application therefor is made prior to the expiration of three (3) years from the effective date of this Act.

Art. 16.21. . . .

Any such unincorporated farm mutual insurance company which has heretofore been in business prior to April 6, 1937, and is still in business, and permitted currently to operate under a certificate of authority issued by the State Board of Insurance and has paid all its losses promptly according to contract, shall at any time prior to the expiration of three (3) years from the effective date of this Act, when authorized to do so by two-thirds of its directors, or by a majority vote of its policyholders voting at any annual meeting or special meeting called for that purpose, apply for a charter and be incorporated for a perpetual term as a farm mutual insurance company under this chapter without compliance with the preceding Articles 16.03, 16.04, 16.05 and 16.06. The application for such charter shall state its name, its purpose, the location of its principal office, the number and names of its directors, and the nature and value of its assets, and it shall be signed and acknowledged by its president and secretary. It shall thereupon be entitled to a charter and to function and do business as a farm mutual insurance company, and to enjoy the same rights, privileges and immunities that it had and enjoyed as an unincorporated company, except as otherwise herein provided.

Any such unincorporated farm mutual insurance company until receiving its charter shall nevertheless be subject to the provisions and requirements of this chapter to the extent pertinent.

. . .

[Sections 911.068-911.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Revised Law

Sec. 911.101. AUTHORITY TO ENGAGE IN BUSINESS. Except to the extent of any conflict with this chapter, a farm mutual insurance company must hold a certificate of authority under Section 801.051 to engage in the business of insurance in this state under this chapter. (V.T.I.C. Art. 16.24, Subsec. (b) (part).)

Source Law

(b) Regardless of the preceding portion of this Article,
Articles . . . 1.14, . . . of this code shall apply to and govern farm mutual insurance companies except where such Articles or portions thereof are in conflict with the provisions of Chapter 16 of the Insurance Code.

Revisor's Note

Subsection (b), V.T.I.C. Article 16.24, provides that a farm mutual insurance company is subject to V.T.I.C. Article 1.14. That article, revised as part of Chapter 801 of this code, relates to the issuance of a certificate of authority to engage in business in this state. For clarity and consistency within this code, the revised law substitutes for the reference to the cited article an explicit statement that a farm mutual insurance company must obtain a certificate of authority to engage in the business of insurance in this state.

[Sections 911.102-911.150 reserved for expansion]

SUBCHAPTER D. POLICIES AND COVERAGE

Revised Law

Sec. 911.151. KINDS OF INSURANCE AUTHORIZED. (a) A farm mutual insurance company may insure property against loss or damage by:

(1) fire, lightning, explosion, theft, windstorm, hurricane, hail, riot, civil commotion, smoke, aircraft, or land

vehicles; or

(2) any other hazard against which any other fire or windstorm insurance company operating in this state under Chapter 862 may write insurance on property described by Subsection (b).

(b) The company may write insurance against the hazards described by Subsection (a) on:

(1) a rural or urban dwelling and attendant outhouses and yard buildings and all their contents for home and personal use, musical instruments and libraries, barns and ranch buildings of any description and vehicles and implements used on or about barns or ranch buildings;

(2) agricultural products that are produced or kept on farms or ranches;

(3) a church building, fraternal lodge hall, private or church school, or nonindustrial use building owned by a nonprofit organization, regardless of the location;

(4) a trailer or mobile home; and

(5) growing crops if the insurance is reinsured by:

(A) the Federal Crop Insurance Corporation under Section 508, Federal Crop Insurance Act (7 U.S.C. Section 1508); or

(B) a property and casualty insurance company that:

(i) is authorized to write insurance in this state; and

(ii) has a rating by the A.M. Best Company of A- or better. (V.T.I.C. Art. 16.01, Subsecs. (a) (part), (b) (part).)

<u>Source Law</u>

Art. 16.01. (a) [Farm mutual insurance companies are companies organized on the mutual or cooperative plan] against loss or damage to property below specified by fire, lightning, explosion, theft, windstorm, hurricane, hail, riot, civil commotion, smoke, aircraft and land vehicles, [and heretofore issued a certificate of authority by the State Board of Insurance to operate under the provisions of Chapter 16 of the Insurance Code;] such farm mutuals are authorized to write insurance against loss or damage from any hazard specified herein or that any other fire or windstorm insurance company operating in Texas under the provisions of Chapter 6 of the Insurance Code may write on property below specified.

(b) Farm mutual insurance companies may

insure rural and urban dwellings and attendant outhouses and yard buildings, and all their contents for home and personal use, musical instruments and libraries, barns and ranch buildings of every description together with vehicles and implements used thereon, and agricultural products produced or kept on farms and ranches. . . . except church buildings, fraternal lodge halls, private and church schools, and non-industrial use buildings owned by non-profit organizations may be insured, wherever situated. [Farm mutual insurance companies shall not insure any type of commercial or private passenger motor vehicle] except trailers and mobile homes. A farm mutual insurance company may not insure growing crops unless that insurance is reinsured by:

(1) the Federal Crop Insurance Corporation under Section 508, Federal Crop Insurance Act (7 U.S.C. Section 1508); or

(2) a property and casualty insurance company licensed to write insurance in this state that has a rating by the A.M. Best Company of A- or better.

Revisor's Note

(1) Subsection (a), V.T.I.C. Article 16.01, defines "farm mutual insurance company." The revised law omits the definition as unnecessary because it is duplicative of the substantive provisions of this chapter. The omitted law reads:

(a) Farm mutual insurance companies are companies organized on the mutual or cooperative plan [against loss or damage to property below specified by fire, lightning, explosion, theft, windstorm, hurricane, hail, riot, civil commotion, smoke, aircraft and land vehicles,] and heretofore issued a certificate of authority by the State Board of Insurance to operate under the provisions of Chapter 16 of the Insurance Code; . . . .

(2) Subsection (b), V.T.I.C. Article 16.01, refers to a property and casualty insurance company "licensed" to write insurance in this state. The revised law

substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 911.152. PROPERTY AND HAZARDS AGAINST WHICH COMPANY MAY NOT INSURE. (a) A farm mutual insurance company may not insure:

(1) a building, or the building's contents, with more than 40 percent of the building's floor space or more than 500 square feet of floor space, whichever is less, used for business purposes, except as provided by Section 911.151(b)(3); or

(2) any type of commercial or private passenger motor vehicle, except as provided by Section 911.151(b)(4).

(b) A farm mutual insurance company may not assume or issue an insurance policy that:

(1) indemnifies an insured for liability to a third party the insured incurs in committing a tortious act; or

(2) covers an insured for liability the insured incurs under a contract to maintain, hold, or store property belonging to another. (V.T.I.C. Art. 16.01, Subsec. (b) (part); Art. 16.02.)

Source Law

[Art. 16.01]

(b) . . . No building, or its contents, with more than 40 per cent of its floor space or more than 500 square feet of floor space, whichever is the lesser amount, used for business purposes may be insured by a farm mutual insurance company [except church buildings, fraternal lodge halls, private and church schools, and non-industrial use buildings owned by non-profit organizations may be insured, wherever situated.] Farm mutual insurance companies shall not insure any type of commercial or private passenger motor vehicle [except trailers and mobile homes.] . . .

Art. 16.02. No farm mutual insurance company shall assume or issue any contract of insurance that seeks to indemnify an insured for liability incurred by the insured to third parties for the commission of any tortious act by the insured. No farm mutual insurance company shall assume or issue any contracts of insurance covering the liability of any insured under a contract to maintain, hold or store property belonging to others.

Revisor's Note

V.T.I.C. Article 16.02 prohibits a farm mutual insurance company from issuing a "contract of insurance" against certain risks. For consistency of terminology in this chapter, the revised law substitutes "policy" for "contract" in this section and throughout this chapter.

Revised Law

Sec. 911.153. CONTRACT TERMS: INCORPORATION OF BYLAWS. (a) A farm mutual insurance company's bylaws are part of each contract between the company and an insured.

(b) Each policy issued by the company must state that the company's bylaws are part of the contract. (V.T.I.C. Art. 16.08, Subsec. (e).)

Source Law

(e) By-laws of the company shall always constitute a part of the contract with the insured and the policy shall so state.

Revised Law

Sec. 911.154. CONTRACT TERMS: ADOPTION OF ADDITIONAL PROVISIONS. (a) A farm mutual insurance company may adopt as part of the company's bylaws and insurance policies any provision contained in the standard policies of companies writing fire or windstorm insurance as adopted by the commissioner to the extent the provision applies to a farm mutual insurance company.

(b) A company that adopts a provision as provided by Subsection (a) shall state in the company's bylaws or in each policy issued by the company that the provision has been adopted as provided by Subsection (a). (V.T.I.C. Art. 16.08, Subsec. (c).)

Source Law

(c) Farm mutual companies may adopt all rules, regulations, provisions and requirements contained in the standard policies of companies writing fire or windstorm insurance as promulgated from time to time by the State Board of Insurance, insofar as they are applicable to farm mutual insurance companies, as a part of their by-laws and contracts of insurance, which adoption shall be evidenced either by statement to that effect in the by-laws or in the policies.

Revisor's Note

Subsection (c), V.T.I.C. Article 16.08, refers to "rules, regulations, provisions and requirements." The revised law omits the references to "rules," "regulations," and "requirements" because, in context, those terms are included within the meaning of "provisions."

Revised Law

Sec. 911.155. REPAIR OR REPLACEMENT OF INSURED PROPERTY. The company's bylaws may authorize the company to require, at its option, that all or a percentage of the money paid for a loss be used to replace or repair the damaged or destroyed property. The requirement may apply equally to personal and real property, including personal and real property exempt from execution, such as a homestead or a building on the homestead. The company may provide in its bylaws that the requirements of Section 862.053 do not apply to its insurance policies. (V.T.I.C. Art. 16.08, Subsec. (d).)

Source Law

(d) The by-laws may also provide that when a loss occurs, the companies may, at their option, provide and require that all or a certain per cent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed, provided such provision may be made equally applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homesteads and exempt personal property. Provided also, that farm mutual companies may in their by-laws provide that the requirements of Article 6.13 of this Code shall not be applicable to their contracts of insurance.

[Sections 911.156-911.200 reserved for expansion]

SUBCHAPTER E. CHARGES, PREMIUMS, AND ASSESSMENTS

Revised Law

Sec. 911.201. PAYMENT OF PREMIUM OR ASSESSMENT. (a) A farm mutual insurance company's bylaws must:

(1) state the time and manner of the levy and payment

of a premium or assessment for policies written by the company;

(2) in addition to the regular premium or assessment under Subdivision (1), establish the contingent liability of a policyholder for all losses accrued while a policy is in force in the amount of at least $1 for each $100 of insurance coverage, except as provided by Subsection (b); and

(3) state the time and manner of payment of a policyholder's contingent liability established under Subdivision (2).

(b) A company's bylaws may provide for the issuance of policies without contingent liability as required by Subsection (a)(2) if the company has policyholder surplus in the amount of at least $1,000,000.

(c) As required by its bylaws, a farm mutual insurance company shall establish and levy premiums and assessments, including the contingent liability of a policyholder, for all insurance written by the company.

(d) A policyholder shall pay premiums and assessments as required by the company's bylaws.

(e) The premium or assessment for a policy shall be secured by a lien on each item of real or personal property, other than a homestead, covered by the policy, including the land on which an insured building is located. The lien remains on the property while the insured owns the property.

(f) A conservator, receiver, or liquidator of a farm mutual insurance company may not make an assessment against a policyholder for the contingent liability established under Subsection (a)(2). (V.T.I.C. Art. 16.08, Subsecs. (a), (b); Art. 16.10 (part); Art. 16.11 (part).)

Source Law

Art. 16.08. (a) The by-laws will state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

(b) They shall also fix the liability of the policyholders for all losses accrued while the policies are in force in addition to the regular premium or assessments for the same and the time and manner of the payment of such liability; provided that the amount of such contingent liability shall not be less than One ($1.00) Dollar for each One Hundred ($100.00) Dollars of insurance in such policy. However, the by-laws may provide for the issuance of policies without such contingent liability if the company has policyholder surplus of at least One Million

($1,000,000.00) Dollars.

Art. 16.10. All premiums and assessments, including the contingent liability of policyholders for all insurance written by farm mutual insurance companies shall be fixed, levied and paid as and when required by the by-laws of the companies and the whole premium or assessment for a policy shall be secured by a lien on each item of real or personal property other than homesteads covered by such policy including the land on which the insured buildings are situated, as long as the same remain the property of the insured.

. . .

Art. 16.11. . . .

No assessment may be made against a policyholder for the contingent liability established under Article 16.08(b) of this code by the conservator, receiver, or liquidator of a farm mutual insurance company.

Revised Law

Sec. 911.202. NONPAYMENT OF PREMIUMS OR ASSESSMENTS: FILING OF ACTION. (a) A farm mutual insurance company may bring an action in the county in which the company's home office is located against a policyholder who defaults on the payment of a premium or an assessment.

(b) The company is entitled to judgment against the policyholder for:

(1) delinquent premiums or assessments;

(2) foreclosure of the lien described by Section 911.201; and

(3) the costs of an action, including a reasonable attorney's fee. (V.T.I.C. Art. 16.10 (part).)

Source Law

Art. 16.10. . . .

If default is made by a policyholder in the payment of an assessment or premium, suit may be brought against him for the same in any court of competent jurisdiction in the home county of the company and the company shall be entitled to have judgment against him for such delinquent premiums or assessments, and for a foreclosure of said lien, together with all costs of suit including a reasonable attorney's fee.

Revisor's Note

V.T.I.C. Article 16.10 provides that a farm mutual insurance company may file suit "in any court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.0011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 911.203. POLICYHOLDER LIABILITY. A policyholder is liable for the losses of a farm mutual insurance company only as provided by the company's constitution and bylaws, and only in proportion to the amount that the premium or assessment for the policyholder's policy bears to the total amount of premiums or assessments for all policies written by the company in the class to which the policyholder's policy belongs. (V.T.I.C. Art. 16.11 (part).)

Source Law

Art. 16.11. Policyholders shall be liable for losses of the company only as prescribed in the constitution and by-laws of the company, and that only in proportion that the premiums or assessments for the insurance of any policy bear to the total amount of the premiums or assessments for all the insurance in the class to which the policy belongs.

. . .

[Sections 911.204-911.250 reserved for expansion]

SUBCHAPTER F. AGENTS

Revised Law

Sec. 911.251. LICENSING AND APPOINTMENT OF CERTAIN AGENTS. (a) An individual or firm may not solicit, write, sign, execute, or deliver insurance policies, bind insurance risks, collect premiums, or otherwise act on behalf of a farm mutual insurance company in the capacity of a local recording agent in the solicitation or sale of crop insurance unless the individual or firm is licensed under Article 21.14.

(b) A farm mutual insurance company may not appoint and act through an agent who qualifies for a license as an agricultural insurance agent under Article 21.14-2. (V.T.I.C. Art. 16.24A.)

Source Law

Art. 16.24A. (a) No person or firm shall solicit, write, sign, execute or deliver insurance policies, bind insurance risks, collect premiums, or otherwise act in the capacity of a local recording agent in the solicitation or sale of crop insurance for a farm mutual insurance company unless the person or firm is licensed under Article 21.14 of this code.

(b) A farm mutual insurance company may not appoint and act through an agent who qualifies for a license as an agricultural insurance agent under Article 21.14-2 of this code.

[Sections 911.252-911.300 reserved for expansion]

SUBCHAPTER G. REGULATION OF FARM MUTUAL INSURANCE COMPANY; FINANCIAL REQUIREMENTS

Revised Law

Sec. 911.301. GENERAL OPERATING REQUIREMENTS. (a) In this section, "rural property" means property located outside an area of land subject to the taxing authority of a municipality with a population of more than 2,500.

(b) A farm mutual insurance company shall:

(1) maintain a majority of the company's total insurance in force on rural property at all times the insurance is written; and

(2) operate on a regular and special assessment basis.

(c) Except as otherwise approved by the commissioner, a farm mutual insurance company may not use more than 33 percent of the company's gross income for expenses.

(d) Property that is rural property at the time the property is originally insured continues to be classified as rural property if:

(1) the policy or policies that insure the property are written by the same farm mutual insurance company; and

(2) the coverage continues in effect without lapse of coverage for more than 60 days. (V.T.I.C. Art. 16.01, Subsec. (c) (part).)

Source Law

(c) Each farm mutual insurance company . . . must maintain a majority of its total insurance in force on rural property at all times at the time of writing thereof, and operate on a regular and special assessment basis and use not more than 33 per cent (33%) of their gross income for expenses unless otherwise approved by the Commissioner of Insurance. "Rural property" shall mean any property located outside an urban area. "Urban area" as used herein shall mean that land area subject to the taxing authority of any incorporated city or town having a population by the last published federal census figures of more than 2,500 inhabitants. Property located in what is defined as rural property by the preceding sentence at the time it is first insured shall thereafter continue to be classified as rural property so long as insurance thereon continues by policy or policies written by the same farm mutual insurance company without lapse in effective coverage for longer than sixty (60) days.

Revisor's Note

(1) Subsection (c), V.T.I.C. Article 16.01, refers to an "incorporated city or town." The revised law omits "incorporated" and substitutes "municipality" for "city or town" because under the Local Government Code all municipalities must be incorporated and "municipality" is the term used in that code.

(2) Subsection (c), V.T.I.C. Article 16.01, describes a population of more than 2,500 inhabitants to be determined according to the "last published federal census figures." The revised law omits the reference to the federal census as unnecessary. Section 311.005(3), Government Code (Code Construction Act), and Section 312.011(20), Government Code, define "population" as population according to the most recent federal decennial census. That definition applies to the revised law.

Revised Law

Sec. 911.302. LOCATION OF BUSINESS. (a) Except as provided by Subsection (b), a farm mutual insurance company may write insurance in:

(1) the county in which the company's home office is

located at the time of incorporation and in any county adjoining the county in and for which the company is organized;

(2) any county in which another farm mutual insurance company is not organized; and

(3) any county in this state if the company's reserve fund exceeds $200,000 in cash or securities in which the reserve fund of a stock fire insurance company may be invested.

(b) This section does not apply to a farm mutual insurance company organized and operating in this state under a certificate of authority issued before May 21, 1973, under former Chapter 16 of this code. (V.T.I.C. Art. 16.07.)

Source Law

Art. 16.07. A farm mutual insurance company may write insurance (a) in the county where its home office is located at the time of incorporation and in any county adjoining the county in and for which it is organized; or (b) in any county in which no farm mutual insurance company has been organized; or (c) anywhere in Texas if its reserve fund exceeds the sum of Two Hundred Thousand ($200,000.00) Dollars in cash or securities in which the reserve fund of stock fire insurance companies may be invested; provided, however, that the provisions of this entire article shall not apply to any farm mutual insurance company now organized and operating in Texas and having heretofore been issued a certificate of authority under Chapter 16 prior to the effective date of this Act.

Revisor's Note

V.T.I.C. Article 16.07 provides an exemption from the application of the article for a farm mutual insurance company organized and operating under a certificate of authority issued before "the effective date of this Act." The quoted language was enacted by Chapter 139, Acts of the 63rd Legislature, Regular Session, 1973, which took effect May 21, 1973. The revised law substitutes that date for the quoted language.

Revised Law

Sec. 911.303. REINSURANCE. (a) A farm mutual insurance company may reinsure the company's risks with another company against any hazard against which the farm mutual insurance company is permitted to insure.

(b) The farm mutual insurance company may contract for mutual or reciprocal reinsurance with another company on the mutual or cooperative plan subject to the following conditions:

(1) the farm mutual company may assume the reinsurance on the risks of the other company only if the other company reinsures the risks of the farm mutual insurance company; and

(2) the farm mutual company may write or assume the reinsurance only on property that the company is authorized to insure and that is located in this state.

(c) A farm mutual insurance company that reinsures another company's property is liable for the losses of the other company only as specified in the reinsurance contract. The farm mutual insurance company does not become a member or partner of the other company as a result of the reinsurance.

(d) A farm mutual insurance company may pay or collect additional assessments or premiums for the purpose of a contract described by Subsection (b). (V.T.I.C. Art. 16.17.)

Source Law

Art. 16.17. Farm mutual insurance companies may reinsure any or all of their risks against any or all hazards which they are permitted to insure against with any other company or companies.

They shall have power and authority to make and enter into mutual or reciprocal reinsurance contracts with other companies on a mutual or cooperative plan; provided that no farm mutual shall write or assume the reinsurance on any other property than the property it is permitted to insure, or on property situated outside of the State of Texas; and when such a farm mutual reinsures the property of another company, it shall not by reason of such fact be, or become a member or partner, of such company, but shall only become liable for the losses of such other company as specified in the contract of interinsurance and not otherwise; and provided further, that a farm mutual shall only have authority to reinsure the risks of another company in consideration of the fact that such other company reinsures its risks; and for that purpose it may pay or collect additional assessments and/or premiums as the case may be.

Revisor's Note

V.T.I.C. Article 16.17 refers to mutual or reciprocal "reinsurance" and to a contract of "interinsurance." The revised law substitutes "reinsurance" for "interinsurance" because, in this context, the terms are synonymous and "reinsurance" is the term more commonly used.

Revised Law

Sec. 911.304. ANNUAL REPORTS REQUIRED. (a) A farm mutual insurance company shall annually prepare a written report as required by this section and submit the report to the company's policyholders.

(b) The annual report must show:

(1) the rate and total amount of premiums or assessments paid during the year for the policyholders' insurance;

(2) the company's operating expenses; and

(3) the name of each claimant and the amount paid for each loss suffered, except as provided by Subsection (c).

(c) The company is not required to report the names of claimants and the amounts paid to claimants in one class of insurance to the policyholders in another class of insurance, unless the policyholders in the other class are liable for the losses of the class in which the claimants are members.

(d) The company shall make available to each policyholder a copy of the annual report at the time and in the manner prescribed by the company's bylaws.

(e) A farm mutual insurance company shall make annual reports to the department as required by the commissioner or by law. (V.T.I.C. Art. 16.18.)

Source Law

Art. 16.18. Farm mutual insurance companies shall annually make and submit written reports to their policyholders showing (a) the rate and total amount of premiums or assessments paid during the year for their insurance, (b) the operating expenses, (c) the names of the claimants and the amounts paid each for the losses suffered; and make available to each policyholder a copy of such report as and when prescribed in the by-laws of the company; provided, however, that it shall not be necessary to report the names and amounts of claims of policyholders of one class of insurance to the policyholders in another class, unless the policyholders in such other class are liable for the losses of the former class.

They shall also make such reports annually to the State Board of Insurance as the Board may require of them, or as shall be required by law.

Revised Law

Sec. 911.305. EXAMINATION OF COMPANY. The department shall examine each farm mutual insurance company as often as the department determines necessary. (V.T.I.C. Art. 16.19.)

Source Law

Art. 16.19. The State Board of Insurance shall as often as it deems necessary, examine farm mutual insurance companies.

Revised Law

Sec. 911.306. SOLVENCY REQUIREMENTS. (a) A farm mutual insurance company is solvent if:

(1) the company's assets, including the policyholders' contingent liability for the company's losses, are reasonably sufficient to pay the company's losses according to the terms of the policies; and

(2) the company's required unencumbered surplus, if any, has not been impaired in excess of 16-2/3 percent of the required unencumbered surplus.

(b) A company that is solvent as provided by this section may continue to engage in the business of insurance. (V.T.I.C. Art. 16.20.)

Source Law

Art. 16.20. A farm mutual insurance company or association shall be considered solvent and entitled to continue business if its assets, including the contingent liability of its policyholders for its losses, are reasonably sufficient to pay its losses, according to the terms of the policies and it has not impaired its required free surplus, if any, to any extent in excess of 16 2/3 per cent of such surplus.

Revisor's Note

V.T.I.C. Article 16.20 provides that a farm mutual insurance company "or association" is solvent if, in addition to other requirements, the company or association has sufficient assets to pay losses. The revised law omits the reference to "association" because under the law all farm mutual insurance companies must be incorporated. V.T.I.C. Article 16.05, revised in relevant part as Section 911.056(b), prohibits an association from issuing insurance policies and paying losses under a permit to solicit insurance. Thus, an association will not have sufficient assets to pay losses because the association is prohibited from issuing policies or paying losses. An association will have assets and the authority to pay losses only after it forms a farm mutual insurance company.

Revised Law

Sec. 911.307. RESERVE REQUIREMENTS. (a) A farm mutual insurance company's board of directors may provide for the accumulation of reserve funds.

(b) The company shall invest the reserve funds in the same type of securities in which the reserve funds of other fire insurance companies are required to be invested by law. (V.T.I.C. Art. 16.15.)

Source Law

Art. 16.15. The Board of Directors of farm mutual insurance companies may provide for the accumulation of reserve funds, to be invested in such securities as the reserve funds of other fire insurance companies are by law required to be invested.

Revised Law

Sec. 911.308. SURPLUS REQUIREMENTS. (a) A farm mutual insurance company organized between January 1, 1955, and May 21, 1973, shall maintain an unencumbered surplus of $2 for each $100 of insurance in force or an unencumbered surplus of $200,000, whichever amount is less.

(b) A farm mutual insurance company organized under this chapter on or after May 21, 1973, shall maintain an unencumbered surplus in cash of $2 for each $100 of insurance in force or an unencumbered surplus of $200,000, whichever amount is greater.

(c) A company described by Subsection (b) shall invest the minimum unencumbered surplus as provided by Section 822.204. The company may invest funds in excess of the minimum unencumbered surplus as provided by Article 2.10.

(d) A company described by Subsection (b) shall, without delay, restore the minimum unencumbered surplus if the surplus is impaired. The department shall proceed as provided by Section 5, Article 1.10. (V.T.I.C. Art. 16.06 (part); Art. 16.25.)

Source Law

Art. 16.06. . . .

(b) [The free surplus required herein] in cash. All companies organized after the effective date of this Act under this Chapter . . . [shall at time of incorporation and] at all times thereafter have free surplus equal to $2.00 for each $100.00 of insurance in force, or $200,000.00 whichever amount is greater invested as provided in Article 2.08 of this Code as now provided or as amended in the future. Funds in excess of such minimum surplus may be invested as now provided in Article 2.10 of this Code or as amended in the future. If such free surplus is at any time impaired, it must be restored without delay under the provisions of this Chapter; the State Board of Insurance shall proceed as is provided in Section 5 of Article 1.10 of this Code as it now exists or as amended in the future.

Art. 16.25. All farm mutual insurance companies organized between January 1, 1955, and the effective date of this Act shall always have a free surplus of $2.00 for each $100.00 of insurance in force; or a free surplus of $200,000.00 whichever amount is less.

Revisor's Note

V.T.I.C. Articles 16.06 and 16.25 refer to the "effective date of this Act." That provision was enacted by Chapter 139, Acts of the 63rd Legislature, Regular Session, 1973, which took effect May 21, 1973. The revised law substitutes that date for the quoted language.

CHAPTER 912. COUNTY MUTUAL INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS